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THE ST. LOUIS BRIBERY INVESTIGATION.

Undoubtedly one of the most famous and successful bribery investigations in the history of American jurisprudence has been in progress in the City of St. Louis for several months past. Under the remarkable skill and resourcefulness of Circuit Attorney Joseph W. Folk, the most stupendous bribery transaction of modern times has been uncovered and the culprits brought to the bar of justice. The particular transaction is know in local parlance as the "Suburban Bribery Deal." It appears that the Suburban railroad, desiring to construct an extension to their road, sought from the municipal assembly of the City of St. Louis a franchise and right of way over certain streets of the city. The bill introduced for this purpose was a very ordinary one, but it appears also that in the municipal assembly, as then constituted, was a combine of a certain number of members of both political parties sufficient to pass a bill over the mayor's veto, which combine held up every bill seeking some private advantage from the city, until a proper *quid pro quo* had been paid or deposited in escrow for the benefit of the members of said combine on the passage of the bill. This combine had a regular scale of prices to be paid for different privileges granted, such as franchises, wharf privileges, etc. In the case of the Suburban bill the combine set the price at $135,000, which was to be deposited in escrow in a certain safe deposit company with duplicate keys placed in the hands of Mr. Murrell, a member of the house of delegates, and of Mr. Kratz, of the council, with authority, when the franchise was granted, to divide the money between members of the combine in both houses. But where thieves fall out and disagree the law triumphs. The bill passed both houses of the municipal assembly over the mayor's veto but was killed in the supreme court. The "legislative agent" of the company and the representatives of the combine quarreled over the right to the money held in escrow. Mr. Folk brought the matter to the attention of the grand jury, and by one of the greatest coups in criminal practice succeeded in getting control of the money put in escrow. Permitting certain officials of the company to turn state's evidence, he then secured the indictment of all members of the municipal assembly implicated in the deal, precipitating their trials with unusual promptness.

Some of the men indicted, however, were not to be sharers in the division of the money held escrow but were to receive some other consideration. One of these latter cases, that of Mr. Mysenburg, presented some very interesting questions. It appeared that Mr. Mysenburg, who was not a member of the combine, and had been active in opposition to the bill, was approached by the "legislative agent" of the company and asked why he so bitterly opposed the bill. He said that the company had not "treated him right," that certain officials of the company had manipulated a certain enterprise in which he was interested to his financial disadvantage. The "agent" asked what he wished them to do. In his reply he suggested that they purchase the practically worthless stock in the enterprise to which he had referred, at its original value, about $9,000. A check for that amount was immediately made out and handed to Mr. Mysenburg, who, in accepting the same, stated that it must not be considered as a contract to influence his vote. Subsequently, Mr. Mysenburg withdrew his active opposition to the bill. The question was whether there was a contract to sell his vote on the part of the defendant. The court left the question to the jury, who, in holding the defendant guilty, seemed to think that his action in accepting the company's proposition and withdrawing his opposition to the company's measure was sufficient acceptance of contract to make him guilty of bribery. This is certainly one of the most difficult questions arising in a trial for bribery where the liability of the bribe taker is involved. It might be stated to be the safest rule that if a member of a legislative assembly accepts a sum of money or other valuable consideration or favor from one whom he should have reason to suspect intended the same to influence his vote, and, by his subsequent actions, he shows clearly that it has influenced his vote, he is guilty of accepting a bribe, although

he entered into no express contract to sell his influence or his vote.

Municipal corruption in this country has become a by-word. Prof. Bryce, in his American Commonwealth, says that it is prevalent to such an extent that the American people have become indifferent to it. Certain it is that members of municipal assemblies all over the country seem to regard certain favors of the kind disclosed in the St. Louis bribery investigation to be among the ordinary prequisites of the office. The successful issue of the trials now under way in St. Louis will be awaited with interest all over the country as sounding a higher note of civic morality.

NOTES OF IMPORTANT DECISIONS.

TRIAL AND PROCEDURE—ACTIONS OF PLAINTIFF AROUSING THE JURY'S SYMPATHY.—Opportunities for influencing the jury by appeals to their sympathy are not often allowed to slip by unimproved. How far, however, such appeals are ground for new trial is well illustrated by the recent case of Galveston, etc. Ry. Co. v. Hitzfelder, 66 S. W. Rep. 707. This was an action for injury to plaintiff which had resulted in producing epilepsy with its attendant violent convulsions. While defendant was testifying plaintiff fell down in the court room in an epileptic convulsion, and caused some excitement, in the presence of the jury. The court held that this was not ground for setting aside a verdict in his favor on the ground that his condition had aroused the jury's sympathy and prejudiced defendant's case, where only $10,000 was awarded him.

JURISDICTION OF THE U. S. SUPREME COURT IN THE RAILROAD MERGER CASE.—The suit of the State of Minnesota v. Northern Securities Company, 22 Sup. Ct. Rep. 308, is attracting considerable attention, more because of the importance of the litigation than upon any novelty in the decision. In this case, the state of Minnesota, being apprehensive that the majority of the stockholders of the Great Northern and Northern Pacific railway systems have combined in a new organization, known as the Northern Securities Company, thus operating to defeat and overrule the policy of the state in prohibiting the consolidation of parallel and competing lines of railway, the court found that the Northern Securities Company controlled only a majority of the stock, and that certain minority stockholders, residents of Minnesota, were not joined nor before the court. The court held that the original jurisdiction of the Supreme Court of the United States cannot be exercised in a suit between a state and a citizen of another state, when, with the latter, citizens of the complainant state must necessarily be joined as parties.

WITNESS—WHO IS QUALIFIED TO GIVE EXPERT TESTIMONY ON THE SUBJECT OF ELECTRICITY.—Expert witnesses have fallen into great disrepute owing to the fact that they are too sensitive to the highest bidder, and for the further reason that persons of only moderate attainments too often fail to show any great reluctance in claiming the knowledge and experience that properly belongs only to "experts." It is therefore very refreshing to observe the frank confession of a physician of want of expert knowledge or a subject properly within the purview of his professional equipment. We refer to the recent case of Wehner v. Lagerfelt, 66 S. W. Rep. 221, which was an action for injury caused by an electric shock. To prove the effect of electricity on the human body, the testimony of a physician of thirty-five years' practice was offered in evidence. Witness testified that he had read the best of authorities on the subject and knew what they said as to the result of electricity on the human system, but that he had had no personal experience, was not what you would call an "expert," and did not feel perfectly qualified in giving an opinion. The Court of Civil Appeals of Texas, before whom the question arose, held that an objection to his testifying should be sustained. The court said:

"An 'expert,' as the word imports, is one having had experience. Lawson, Exp. Ev. (2d Ed.) 230. Rule 36, which follows the definition by the same author, is thus stated: 'Therefore, to render the opinion of a witness admissible on the ground that it is the opinion of an expert, the witness must have special skill in the subject concerning which his opinion is sought to be given.' Then, quoting from Carr v. Northern Liberities, 35 Pa. 324, 78 Am. Dec. 342, he says: 'Matter of opinion is entitled to no weight with a court or jury, unless it comes from persons who first gave satisfactory evidence that they are possessed of such experience, skill, or science in such matters as entitle their opinions to pass for scientific truth.' Of all others the witness was best qualified to know whether he was an expert on the subject concerning which his opinion was sought to be given. To his credit, learning, and candor, be it said, he knew himself well enough to know that he was not an expert, and did not feel qualified to give an opinion on the subject of inquiry. Frankly expressing to the court this knowledge and opinion of himself, it became apparent that, if he gave any opinion, it could not be such as would be 'entitled to pass for a scientific truth.' When a witness states he knows nothing about the subject of inquiry, and that he is not qualified to give an opinion, he should not be permitted to express any; for, in order to say something concerning a matter, the witness should know something. Wheeler v. Blandin, 22

N. H. 167, and *Id.*, 24 N. H. 168. In the case before us the witness had no experience, and did not consider himself either an expert or qualified to give an opinion. He only knew what the books said upon the subject. It was not sought to be shown that he had formed an opinion from the books, or, if he had, what such opinion was. While an expert may testify to an opinion of his own derived from books, for one to do so he must be an expert, and have an opinion of his own upon the subject of inquiry. Books of science and art are not admissible in evidence to prove the opinions contained therein. Lawson, Exp. Ev. 202. If they are not, how can one who knows their contents, but has formed no opinion of his own upon the subject under consideration, be allowed to testify to what the books say? The books themselves would be the best evidence, and they are no evidence at all. The witness testified to everything he knew about the effect of the electric shock upon the child, and the court did not err in refusing to permit appellants to prove anything more by him."

TO WHAT PERIOD OF TIME IS THE IMPEACHMENT OF A WITNESS FOR TRUTH AND VERACITY LIMITED?

1. Introduction — Statement of the Proposition—Division of Authority Indicated.
2. Impeaching Testimony as to Truth and Veracity Limited to Such Character at the Time of the Trial — Discussion of Authority — Reasons Advanced and Cases Cited.
3. Impeaching Testimony Not Confined to the Time of Trial—Reasoning of the Position and Cases Cited.
4. Divergence of Authority Discussed—Limitations and Modifications of Each Position—Authorities Nominally in Conflict Tending to an Agreement as to all Practical Intents—Conclusion.

1. *Introduction — Statement of the Proposition—Division of Authority Indicated.*— It is a familiar principle of the law of evidence that after a witness has been examined in chief, the testimony of that witness may be impeached. This may be done in various modes. The methods mentioned by the text-writers, other than by cross-examination, are: (1) By disproving facts stated by the witness in court, by the testimony of other witnesses; (2) By proof of contradictory statements made out of court by the same witness; (3) By general evidence affecting the character of the witness, thereby enabling the jury to more adequately and justly pass on the weight of such evidence.[1] The investigation—the subject—of this thesis is confined to the latter of the three methods enumerated above, *i. e.*, the impeachment of the witness by evidence of the character of the impeached, whose credibility is thereby attacked. Among the different states there has been considerable difference of opinion as to the term "character;" some holding that the proper inquiry is, as to the general moral character of the witness sought to be impeached; while others adhere strictly to the rule that such inquiry should be confined to the reputation of the witness for truth and veracity among those among whom he has lived,—his neighbors.[2] This thesis is, however, concerned only with the latter, *i. e.*, the impeachment of a witness by proof of his bad reputation for truth and veracity; and it is an effort to ascertain to what period of time such testimony, as to the character of the witness for truth and veracity, will be limited. It will be the effort of the writer to confine this treatise strictly to these points, and to make it exhaustive on this line.

It is generally agreed among the cases that when, at the trial of a cause, impeaching testimony is introduced, the question in issue is the character of the impeached at the time of trial. The material object of the inquiry is the character of the witness at the time he testifies;[3] and that when, at the trial of a cause, the character of a witness is shown, in order to affect his credibility, the question is whether he then, at the time of the trial, tells the truth. It is his character at the time he testifies that is under investigation.[4] The object of the inquiry is to aid the jury in ascertaining the degree of credit due to the witness in question, so far as it may depend on his character for truth.[5]

But while there seems to be quite a general concensus of opinion upon this proposition, the authorities seem far from an agreement as to how this issue shall

[1] Thomson on Trials, 521 523; Taylor on Evidence, sec. 1470; Philips on Evidence, vol. 2, p. 799; Starkie on Evidence, 236; Wharton on Evidence, 549; Rice on Evidence, 613; Greenleaf on Evidence, 461; Jones on Evidence, 860-863.

[2] For an exhaustive treatise on this phase of the subject, see Thesis by Mr. Emerson Ela, Law 1901, University of Wisconsin.

[3] Am. & Eng. Ency. of Law, vol. 29, p. 802.

[4] Smith v. Hine, 179 Pa. 203.

[5] Brown v. Leuhrs, 1 Ill. App. 74; Walker v. State, 6 Blackf.; Aurora v. Cobb, 21 Ind. 468; Willard v. Goodenough, 30 Vt. 393; Teese v. Huntington, 23 How. 2; Mitchell v. Commonwealth, 79 Ky. 219; Norwood v. Andrews, 71 Miss. 641, 16 South. Rep. 262.

be proved. In bringing before the jury testimony as to the reputation of the witness for truth and veracity to show his present credibility at the time of trial, there arises the question, to what period of time shall the evidence of such reputation, for the proof of the present character of the witness, be limited. Shall such evidence be confined to the character of the witness among his neighbors at the time of the trial,[6] or shall it extend to some time anterior to the trial,—a day, a week, a month, a year, or several years?[7] It is upon this proposition that the courts seem to divide; some states holding that such testimony as to the truth and veracity of the witness should be confined to the time of the trial;[8] others, that such impeaching testimony should not be limited to the time of trial, but should be allowed to extend to a period anterior to the trial, wherever such testimony would in reason affect the present credibility of the witness.[9]

2. *Impeaching Testimony as to Truth and Veracity Limited to Character at the Time of the Trial—Reasons Advanced by the Authorities—Cases Cited.*—There is quite an array of authority to support the position that evidence designed to impeach the character of a witness for truth should relate to the time of the examination,[10] and to his reputation[11] for truth and veracity at the place where he resided among those who knew it then, *i. e.*, at the time of the trial. The reasoning upon which these decisions seem to rest appears to be as follows: It is established by the cases that it is the character of the witness at the time of the trial, his then reputation, that will affect his then reputation with the jury, that is in issue; that "the thing to be established is the character at the time of the examination;" that, as was stated by Judge Brewer, while a member of the Kansas Supreme Court, "Impeaching testimony is for the purpose of discrediting a witness by showing that the community in which he lives do not believe what he says; that he is such a notorious liar that he is not generally believed. It is the present credibility that is to be attacked."[12] To prove this issue, *i. e.*, to establish the character of the witness, the best evidence must, therefore, be the testimony of those who know the character of the witness at the time of the trial.[13] The question should be, according to Judge Brewer, "Is he now to be believed? What do his neighbors think and say of him at the present time? Not what did they think and say months or years ago."[14] Wherefore, if such evidence is manifestly within the reach of the party making the attack an inferior grade of evidence should not be admitted, as it is open to the objection of not being the best evidence. Moreover it is further pointed out that the characters of men change, and that while the reputation anterior to the trial might have been bad, there is a possibility that the character of the witness had entirely changed by the time of the trial, and that such witness should be given the benefit of the presumption of the law that character is good.[15] And, again, that where so serious an attack is made upon a man's character the witnesses should be able to speak of him as he is, and not of him as he was. The burden of proving bad character is as it should be on the party attacking, and that to allow character to be attacked a long time anterior to the trial would be practically to allow the shifting of that burden so lightly as to make the presumption of good character of no avail.[16]

Accordingly, in a leading case much cited, Sun Fire Ins. Co. v. Ayers,[17] in which case testimony was sought to be placed in evidence of the reputation of one of the witnesses two and a half years before the trial,

[6] Sun Fire Office v. Ayerst, 37 Neb. 184.

[7] Sleeper v. Van Middlesworth, 4 Denio, 432.

[8] Indiana, Iowa, Missouri, Nebraska, Michigan, Kentucky, Ohio, Kansas, Vermont, Pennsylvania.

[9] Alabama, Arkansas, Georgia, Illinois, Maryland Massachusetts, Minnesota, Missouri, New York, North Carolina, Pennsylvania, Texas.

[10] Aurora v. Cobb, 21 Ind. 492.

[11] Pratt v. State, 19 Ohio St. 277; State v. Potts, 78 Iowa, 656; Mitchell v. Commonwealth, 78 Ky. 219; Rucker v. Beatty, 3 Ind. 70; Rogers v. Lewis, 19 Ind. 405; Hamilton v. People, 29 Mich. 173; Willard v. Goodenough, 30 Vt. 393; Fisher v. Conway, 21 Kan. 25; Wood v. Matthews, 73 Mo. 477; Robbins v. Ginnochio (Tex.), 45 S. W. Rep. 34; Sun Fire Office v Ayerst, 37 Neb. 184.

[12] Fisher v. Conway, 21 Kan. 25; Young v. Commonwealth, 6 Bush, 317; Manyer v. Commonwealth, 10 Bush, 295; Keator v. People, 32 Mich. 485; Woodman v. Churchill, 51 Me. 112; Commonwealth v. Sampson, 97 Mass. 497; State v. Lanier, 79 N. Car. 622.

[13] Mitchell v. Commonwealth, 78 Ky. 219.

[14] Fisher v. Conway, 21 Kan. 25.

[15] Robbins v. Ginnochio, 45 S. W. Rep. 34.

[16] Mitchell v. Commonwealth, 78 Ky. 219.

[17] 37 Neb. 184.

while in Omaha, it was held that such testimony was properly excluded by the trial court, in so far as it did not relate to the reputation of the witness at the time of trial. In Woods v. Matthews[18] evidence was offered to impeach the plaintiff's witness on the ground that the reputation of such witness was not good in 1875. The trial was held in 1878. The higher court upheld the trial court in the position that such evidence was an inferior grade of evidence, and as it did not refer to the character of the witness at the time of the trial, that it was properly excluded. In State v. Potts[19] Iowa also follows this rule, holding that where the impeached witness has resided a sufficient length of time to have acquired a reputation in the place of residence at the time of trial, it was not permissible to inquire into the reputation of the witness at another place of residence, five years prior to that time, on the ground that there was no reason in going back, when the neighbors at the new place of residence could have testified equally well. And in a recent case in the same state, Schoep v. B. A. Ins. Co. of California, even while the introduction of testimony as to the character of the witness one year prior to the trial, was approved, the court makes it a special point to affirm its previous holding in the 78 Iowa, pointing out that the two cases were distinguishable. In the prior case a witness had resided in the community a sufficient length of time to have acquired a reputation at the time of the trial, while in the Schoep case the witness had not lived in the community long enough to have established a reputation, since his departure from the earlier community of his residence, one year prior to the time of the trial; and of necessity, upon the question of the present credibility of the witness, there must need have been recourse to the reputation of the witness at his last permanent place of residence. Kentucky, in its latest decision on the subject, Mitchell v. Commonwealth,[20] overrules its previous holdings, *contra*, and holds similarly to Iowa, that where the witness has resided long enough in a community to have established a reputation for truth and veracity, the reputation of such witness at a period anterior to the trial at another place of residence cannot, in the absence of proof of present bad reputation, be admitted to question his present credibility. Texas, in Robbins v. Ginnochio, seems to intimate very strongly an adherence to this doctrine, despite its holding *contra* in Mynatt v. Hudson, theretofore. In the above case, however, in which the court held that the evidence of the reputation of the witness was confined to a period too remote from the trial to be admissible; the period anterior to the trial, which was eighteen or nineteen years, was too remote to bring the question fairly before the court. The evidence was too plainly disassociated with the present credibility to have brought the question squarely to an issue, and in the light of the reasoning of the previous decision it is extremely doubtful whether, if the period had been less remote, the court would have expressed itself, even in *dicta*, to the extent that it seems to commit itself in this case. Indiana, in a series of decisions beginning with Rucker v. Beatty,[21] adheres to the proposition very vigorously in its earlier decisions that testimony as to character must relate to the time at which the witness sought to be impeached is examined.[22] This rule, however, finds considerable modification in its subsequent decisions.

Ohio, without discussing the question at any length, disposes of the policy of that state with the summary proposition that "the law seems well settled that evidence of a witness' reputation for truth should relate to the time of the examination."[23] Pennsylvania holds to a similar position in a recent decision in 1897, making use of the following language: "When at the trial of a cause the character of a witness is shown in order to affect his credibility, the question is whether he then told the truth. It is his character at the time he testified that is under investigation, and this is to be established by evidence of his general reputation at that time, and not his reputation at a time prior to the commencement of the suit, which may be a period remote from that at which he testifies.

[18] 73 Mo. 477.
[19] 78 Iowa, 656.
[20] 78 Ky. 219.
[21] 3 Ind. 70.
[22] Rogers v. Lewis, 19 Ind., 405; Aurora v. Cobb, 21 Ind. 492; Chance v. Indianapolis, etc. Co., 32 Ind. 492; Rawles v. State, 56 Ind. 436.
[23] Pratt v. State, 19 Ohio St. 277.

* * * We have not been referred by counsel on either side to any authorities on the subject, and we are not aware that the question has been decided in this state, but we find that the conclusion we have reached is in harmony with the decisions in a number of other states."[24]

3. *Impeachment Not Confined to the Time of the Trial—Reasoning of the Position and Cases Cited.*—There is another line of authorities, probably in the preponderance, that maintain with equal vigor that the evidence of reputation as to truth and veracity cannot be confined to such reputation at the time of the trial. That evidence of a prior reputation is of necessity competent, as it must extend to and affect present credibility. Its competency should be unquestioned; its weight, for the consideration of the jury, which might vary in proportion to the proximity or remoteness of the time.[25] The reasons for this position gathered from the cases seem to be these: It is the policy of the law to allow the reputation of the witness for truth to be considered as a circumstance by the jury to aid them in determining the degree of credit to be given to such witness.[26]

These authorities concede that while it is true that the character of a witness at the time he testifies is the issue before the court or jury, the object of the inquiry is, after all, to get at the credibility of the witnesses, and therefore why should not his reputation before that time be inquired into, in order to shed light on the question of present credibility?[27] Is not light upon the present character of the witness reflected from the reputation of such witness in the past? The light may be dim and flickering, it is true, on account of the remoteness of time and place, but it is still light. The degree of light, the weight of such testimony should be for the consideration of the jury; but its competency should be unquestioned. Further, in speaking to the question of character, witnesses are not and cannot be restricted to the precise time when their testimony is given. The nature of the inquiry precludes this, for the evidence must of necessity refer to reports and reputation of which a knowledge had been acquired before the witness came to the stand.[28] From which they deduce that the evidence whether as to reputation at the time of the trial or at a more remote period are of the same grade and standing, and that evidence of reputation for truth and veracity at a former period cannot be open to the objection that it is evidence inferior to that obtainable, and therefore held inadmissible. No doubt evidence referring to the character of the witness sought to be impeached at a recent period would have more influence with the jury than the evidence of a more remote period. Still the evidence is of the same grade, and it cannot be said that either would not aid the jury in estimating the value of what has been said by the witness; and accordingly evidence of prior reputation, if not unreasonably disassociated with present credibility, should be admitted. Its competency as an equal grade of evidence with the present reputation should be unquestioned. The weight of such evidence is for the jury according to the remoteness of time or place.

To the objection that is raised, that men's characters are subject to change and that while even though reputation of a witness anterior to the trial might have been bad, inasmuch as it is the present credibility of the witness that is in issue, the presumption of good character should obtain and that evidence of reputation of former times should not be admitted, but that all such evidence should be confined to the reputation at the time of the trial; it is answered that while the law presumes every person to have a good character, yet this must yield to the contrary presumption that a state of things once established by proof is presumed to continue the same until the contrary is shown. "The law does not presume that a person of mature age, whose general character has been notoriously bad up to within a period of five

[24] Smith v. Hine, 179 Pa. 208; Mask v. State, 3 Miss. 77; Fisher v. Conway, 21 Kan. 25; Stratton v. State, 45 Ind. 468; Willard v. Goodenough, 30 Vt. 393.

[25] 29 Am. & Eng. Ency. of Law, 803-804; Sleeper v. Van Middlesworth, 4 Denio, 431; Com. v. Sampson, 97 Mass. 407; State v. McLaughin, 149 Mo. 69; Norwood v. Andrews, 16 South. Rep. 262; Kelly v. State, 61 Ala. 19; Brown v. Leuhrs, 1 Ill. App. 74; State v. Lanier, 79 N. Car. 622; Rathbunn v. Ross, 46 Barber, 127; Buse v. Page, 32 Minn. 111; Snow v. Grace, 29 Ark. 131; Jones v. State, 16 South. Rep. 135; Watkins v. State, 82 Ga. 231.

[26] Davis v. Comm., 15 Ky. 496.

[27] Snow v. Grace, 29 Ark. 131.

[28] Sleeper v. Van Middlesworth, 4 Denio, 432.

years, has reformed so as to have acquired an unimpeachable reputation since that time."[29] And, as it was stated by Beardsley in the leading case on this side of the proposition, Sleeper v. Van Middlesworth,[30] "While it might be too much to say that a character, when once formed, is presumed to remain unchanged for life, still the law, founded on a full knowledge and just appreciation of the general course of human affairs, indulges a strong presumption against any sudden change in the moral as well as the mental and social condition of man. When the existence of a person, a personal relation or state of things is once established by proof, the law presumes that the person, relation or state of things continues to exist as before until the contrary is shown or until a different presumption is raised from the nature of the subject in question. * * * The principle upon which the presumption in such case rests has, it seems to me, a strong application to the question now before the court. It is not looking to common experience in human conduct, generally found to be true, that a thorough change from bad to good character is wrought within four years. It may, and is to be hoped often does occur, but such is not the common course of life. On the contrary there is a strong probability that one whose character was bad four years since is still of doubtful or disparaged fame. So much at least may be asserted without evincing the feeling of a misanthrope or displaying an unusual lack of charity." Reformation, these cases indicate, may be shown in answer to the attack, but the law will not presume it in advance.[31] And while the witness may have reformed, it does not necessarily follow that he did so reform.[32] If he did so reform, it is further intimated that it would be quite as easy for the plaintiff to prove that fact as for the defendant to prove that his character was bad.[33] The conclusion that is therefore drawn is, that such testimony is competent that impeaches a witness by proof of his former reputation for veracity in a neighborhood where he formerly resided if such evidence is not too remote in point of time. "As the law prescribes no definite limit for such period, the discretion of the court must be exercised in every instance where the proposed evidence is not so recent or remote as to preclude all differences of opinion." And the decisions are by no means uniform as to what constitute a proper exercise of this direction, some courts being more liberal in their views regarding the admission of such testimony than other.[34] Thus it has been held that testimony of bad reputation as to truth and veracity is admissible and competent, even though it extend anterior to the trial to a period of: just before the trial,[35] seven months,[36] eighteen months,[37] one year and a half,[38] two years,[39] three years,[40] four years,[41] six years,[42] seven years,[43] eight years,[44] ten years.[45]

4. *Summary — Modification of Each Position— Nominally a Distinction—Practically a Convergance — Conclusion.* — We find, then, upon this question two lines of authority. The majority of well considered opinions note this distinction, and it is generally treated in the authorities as an irreconcilable conflict. In the working out of these respective positions by the various courts, however, we find that each position has been considerably limited and defined. So far, indeed, have these positions been modified, that upon a close scrutiny the conclusion sems inevitable to the writer that a rather anomalous position must be taken; namely, that these two separate and distinct positions, starting out and finding their justification on different and seemingly conflicting logical bases, have, through these modifications, come virtually to a conver-

[29] Rathbunn v. Ross, 46 Bush, 137.
[30] 4 Denio, 431.
[31] Lawson, Presumptive Evidence, 229.
[32] 46 Barb. 127.
[33] Holmes v. Stummel, 17 Ill. 453.
[34] Coates v. Paulu, 26 Pac. Rep. 720; Woodman v. Churchill, 61 Me. 112.
[35] Amidon v. Hosley, 54 Vt. 25.
[36] Beatty v. Larzelere, 15 Montg. Co. Law Rep. 67.
[37] Commonwealth v. Sampson, 97 Mass. 407.
[38] State v. McLaughlin, 149 Mo. 69.
[39] Davis v. Commonwealth, 15 Ky. 396; Norwood v. Andrews, 16 South. Rep. 262.
[40] Kelly v. State, 61 Ala. 19; Brown v. Leuhrs, 1 Ill. App. 74; State v. Lanier, 79 N. Car. 622.
[41] Sleeper v. Van Middlesworth, 4 Denio, 432; Mynatt v. Hudson, 66 Tex. 66; Rathbunn v. Ross, 46 Barber, 127; Buse v. Page, 32 Minn.
[42] Manion v. Lambert, 10 Bush, 295.
[43] Snow v. Grace, 29 Ark. 131; Holmes v. Stummel, 17 Ill. 345; Jones v. State, 16 South. Rep. 135.
[44] Watkins v. State, 82 Ga. 231.
[45] Graham v. Christol, 2 Abb. App. Dec. 208.

gence in their practical application. It seems indisputable that, practically, this so-called conflict of authority noted by the courts in the majority of the cases is more of nominal than of real significance. While each rule if carried to its logical conclusion precludes of necessity the application of the other, nevertheless through this gradual tendency on each side of the position to limit the rule to conform to the necessity of each particular case, there is, as far as any practical rule is concerned, practically a concensus of opinion.

Thus, in the consideration of the so-called New York position by the various courts, it has been frequently pointed out that the evidence of reputation, prior to the time of the trial, introduced to impeach the character of the witness for truth and veracity, must not be of such a remoteness as to have no bearing on the credibility of the witness, that question which immediately concerns the jury.[46] In Willard v. Goodenough,[47] this qualification was again as clearly pointed out. The court expressly states in that case that "evidence of character at a former period 'as a distinct and independent proposition,' that is, as we understand it, without regard to its tendency or want of tendency to prove that character at the time the witness testified—is inadmissible." It was offered to prove in this case the character of the witness at a remote period and the court expressly stated that the time was so remote as under the circumstances would not warrant the court in the exercise of sound discretion to admit it, as it would have no tendency to prove the character of the witness at the time he testified. A United States decision,[48] a case in which seven years was held too remote, clearly indicates the modification that this New York rule is subject to. In speaking of this testimony the court makes use of the following language: "Such testimony undoubtedly may properly be excluded by the court when it refers to a period so remote from the transaction involved in the case, as thereby to become entirely unsatisfactory and immaterial; and as the law cannot fix that period of limitation it must necessarily be left to the discretion of the court."

On the other hand, those courts which seem most strict in following the contrary rule laid down by the Indiana court, that is, of confining the impeaching evidence of character for truth and veracity as to the present time, allow very considerable latitude.[49] Thus in Pape v. Wright,[50] the court uses this language: "The decisions which speak of the time of the trial to which impeaching questions should be directed must be understood to mean a reasonable time. It cannot be possible that they must be directed to the very day, hour or week, or month of the examination; all that is necessary is that the question should designate a time reasonably near the examination." Again, in Stratton v. State,[51] the court stated clearly that "while it is the character of the witness at the time he testifies that is material to be shown, it has never been held that the testimony must have reference to that exact time. If some little latitude were not allowed, it would in many cases be impossible to impeach the most corrupt witnesses, or to sustain the most truthful ones." Accordingly, even in those states that hold most tenaciously to this rule, we find an unmistakable tendency to enlarge the position to conform to the reasonable requirements of the case; and find repeated instances where the impeaching testimony as to the character of the witness at any time from a period of six weeks to three or four years anterior to the trial, has been admitted in the discretion of the trial judge.

There is, moreover, to this position the further modification, as has been clearly pointed out by the Michigan and Iowa courts, that a continuous change and shifting of residence must of practical necessity extend the operation of this rule, and that such extension is within the discretion of the trial judge. Thus in Keetur v. People,[52] it was held that the circumstance that

[46] State v. Parker, 96 Mo., 382; twenty years held too remote; State v. Schuster, 41 At. Rep. 701; a recent N. J. decision (1898), eighteen years held too remote.

[47] 33 Vt. 393.

[48] 23 How. 2.

[49] Rogers v. Lewis, 19 Ind. 405; City of Aurora v Cobb, 21 Ind. 492; Stratton v. State, 45 Ind. 468; Ry. Co. v. Richardson, 66 Ind. 43; Packet Co. v McCool, 83 Ind. 392; Young v. Com., 6 Bush (Ky.) 312; Manion v. Lambert, 10 Bush, 295; Woods v. Matthews, 73 Mo. 477.

[50] 116 Ind. 510 (1889).

[51] 45 Ind. 468.

[52] 32 Mich. 484.

the witness had not a very long place of residence anywhere since the time that the impeaching witness knew him four years ago, allowed "a larger range of inquiry than would be proper when there had been a more fixed domicile," and that such testimony was not too remote. The Iowa court in Schoope v. Ins. Co. of Cal.,[53] recognizes "as an exception to the general rule that where a witness had lived at his home at the time evidence of his reputation was taken, so short a time as not to have acquired a reputation there, evidence as to his reputation where he was better known was admissible."

We have thus the limitation placed upon the New York rule on the one hand that the period as to impeaching testimony shall not be too remote anterior to the trial in the discretion of the trial judge; while on the other hand we find to the Indiana position the constantly increasing tendency to limit the strict rule; so that in each case the circumstances should reasonably control the admission of impeaching testimony for truth and veracity, and that testimony of character anterior to the trial should and must in many cases be admissible, subject to the discretion of the trial judge. The line of demarkation where the one ceases and the other begins, is hypothetical, being in each case discretionary with the trial judge. Thus, as far as any practical consideration is concerned, we find a synthesis of these two positions; and this conjunction is further accentuated by the fact that the authorities of each position expressly admit all such testimony impeaching the character of the witness at any time prior to the trial, provided basis therefor is laid by the introduction of other testimony as to the then bad reputation.[54]

We find therefore, in conclusion, that despite this seeming radical divergence in the authorities when closely scruntinized, this conflict, so called, so far as any practical rule is concerned, is more nominal than real; and the rule that will cover both propositions, acceptable to both alike, is the broader statement that there can be no inflexible rule confining the reputation for truth and veracity to any particular time; and that there can be no particular limit to the time for which impeaching testimony for truth and veracity can be limited. In each case the circumstances should control, in the discretion of the trial judge. As is practically agreed by cases on both sides of the position and by considerations of practical good sense, it is for the court to receive or reject impeaching testimony in the exercise of sound discretion, and that the only occasion when such time will be limited after a ruling is where, in the light of all the facts, there has been a clear abuse of discretion.[8]

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Watertown, Wisconsin.

[53] 73 N. W. Rep. 825.

[54] M. & O. R. Packet Co. v. McCool, 83 Ind. 392. "Where there is evidence at the time of the trial, the assailing party may follow back the line of the witness' life to ascertain what it was at a prior time. Reputations are ordinarily things of slow growth, but there may possibly be cases where the transformation from good to bad or bad to good is sudden and rapid." To like effect: Young v. Commonwealth, 6 Bush, 312; Blackburn v. Mann, 85 Ill. 222; Mitchell v. Commonwealth, 78 Ky. 219; People v. Abbott, 19 Wend. 20; Houk v. Brasson, 45 N. E. Rep. 78; 83 Ind. 292; 127 Ind. 15; 116 Ind. 502; 32 Mich. 484; Wharton on Evidence, vol. 1, p. 547.

[8] The value of this article will consist in the degree of fidelity with which the subject is adhered to, and in its confinement particularly to the line of investigation outlined. The author has accordingly limited the investigation strictly; but has aimed to make it an exhaustive treatment along the line suggested.

CONSTITUTIONAL LAW—CLASS LEGISLATION IN PROVIDING FOR PAYMENT BY WEIGHT OF ALL COAL MINED.

WOODSON v. STATE.

Supreme Court of Arkansas, October 27, 1900.

1. Act April 10, 1899, § 1, makes it the duty of any corporation or person engaged in mining, and employing 20 or more persons, to keep scales to weigh the coal mined; and section 2 provides that all coal mined and paid for by weight shall be weighed before it is screened, and paid for at the weight so ascertained, provided the owner or operator may deduct the weight of any impurities contained in the car, and not discovered until after the weighing. Held, that such section 2 is not unconstitutional, as class legislation, in so much as it includes both the small and the large operators.

2. Acts 1899, p. 165, requiring a coal mining corporation engaged in mining and selling coal by weight to weigh it before it is screened, does not abridge the right of a laborer to contract; and he cannot complain that the powers of the corporation are limited, and less than those of a natural person.

RIDDICK, J.: The only question that we are asked to determine on this appeal is whether the act of April 10, 1899, upon which the prosecution and judgment in this action are based, is a constitutional and valid statute. The first section of the act makes it "the duty of any corporation,

company or person engaged in the business of mining and selling coal by weight or measure and employing twenty or more persons, to procure and constantly keep on hand at the proper place the necessary scales and measures and whatever else may be necessary to correctly weigh and measure the coal mined by such corporation, company or person." Acts 1899, p. 165. The second section is as follows: "All coal mined and paid for by weight shall be weighed before it is screened and shall be paid for according to the weight so ascertained, at such price per ton or bushel as may be agreed on by such owner or operator and the miners who mined the same: provided, that nothing in this act shall be so construed as to prevent said owner or operator from having the right to deduct the weight of any sulphur, slate, rock or other impurities contained in the car and not discoverable until after the car has been weighed." *Id.* p. 166. Another section provides a punishment for failure to comply with the provisions of the act on the part of persons, corporations, and their agents and employees.

It is said by counsel for appellant that this is class legislation; that it is an arbitrary and unreasonable attempt on the part of the legislature to divide the operators of coal mines into two classes; that it permits such an operator employing less than 20 men to pay for digging his coal according to the weight of screened coal produced, while the operator employing 20 men must weigh his coal before screening it, and pay according to the weight thus ascertained. But we do not so understand the statute. The first section, it is true, requires only those operators of coal mines that emply 20 or more persons to keep on hand certain weights and measures; but the second section, for a violation of which the defendant is being prosecuted, applies, it seems to us, to all operators of coal mines. The language is, "All coal mined and paid for by weight shall be weighed before it is screened," etc. This includes the small as well as the large operator, though by the first section the operator employing less than 20 men is not required to procure and keep on hand the weights and measures mentioned. He can, if convenient, use the scales or measures belonging to others; but, if there are none such convenient, he must necessarily keep them, or he cannot pay for his coal by weight. The obvious reason for the distinction in the first section is that it might be very burdensome to require the small operator to keep on hand an expensive set of scales and measures, when his situation might make this unnecessary, whereas the large operator would usually need such scales and measures, and the requirement as to him would usually be less burdensome than it would be upon the small operator. This, it would seem, furnishes a justification for the distinction made by the legislature in the first section, while as to the second section (the one involved here) there is no distinction made. All operators are by it treated alike, and required to weigh before screening all coal mined and paid for by weight. It therefore seems to us that the contention that this statute is an example of arbitrary and unreasonable class legislation cannot be sustained.

It is next said that the act violates the constitution of the state and of the United States, "by restricting the right to contract, by taking property without due process of law, and by denying to certain operators and workers in coal mines the right of civil liberty and the pursuit of happiness." In support of this contention counsel for appellant have favored us with an able and entertaining brief, in which they discuss at considerable length the question of the right of the citizen to make contracts and acquire property. But that is a field into which we need not enter in this case; for, if we concede the contention of counsel that "the right to contract in a lawful private business on terms satisfactory to the parties is a part of the natural liberty of the citizen, which the legislature cannot take away," it does not follow that a corporation is equally exempt from legislative control in that respect. The citizen does not derive his right to contract from the legislature. The corporation does, and it possesses only such powers as may be conferred upon it by the legislative will, and these, under our constitution, are liable to be altered, revoked, or annulled by the power that granted them. Section 6, art. 12, Const. Ark. The plain purpose of this constitutional reservation was to keep corporations under legislative control. The only limitation on this power of the legislature contained in our constitution is that the alteration, revocation, or annulment of the corporate powers must be made "in such a manner that no injustice shall be done to the corporators." Speaking for myself only, it seems to me that this limitation that "no injustice shall be done to the corporators" is nothing more than would have existed in the absence of such words from general rules of law. In the absence of such words, the courts would have implied the limitation that no injustice should be done the corporators, for the legislature cannot confiscate the property of the corporation. This power to alter, revoke, or annul "cannot be used to take away property already acquired under the operation of the charter, or to deprive the corporation of the fruits actually reduced to possession of contracts lawfully made." Sinking Fund Cases, 99 U. S. 700, 720, 25 L. Ed. 496; Railway Co. v. Paul, 173 U. S. 409, 19 Sup. Ct. Rep. 419, 43 L. Ed. 746. But it cannot be said to be unjust to the corporaters for the state to exercise this reserved power by taking away either a part or all of the corporate powers of domestic private corporations organized since the adoption of the constitution above referred to, for the constitutional provision reserving such power to the state enters into and forms a part of the corporate charters of such corporations. When the state alters or revokes the charters, when it takes away part or all of

the corporate powers, it is only acting within the contract made with the corporators in the beginning. But, in exercising the power to alter or revoke, the constitution requires that the property rights of the corporation shall be protected, and that the legislature shall not, under the pretense of altering or revoking the charter, deprive the corporation of its property, or of the benefit of contracts lawfully made. To do so would be manifestly unjust, and the law would not permit it. The alteration or revocation of the corporate powers must be effected in such a way as to work no injustice to the corporators. "Personal and real property acquired by the corporation during its lawful existence, rights of contract or choses in action so acquired, and which do not in their nature depend upon the general powers conferred by the charter, are not destroyed by such a repeal; and the courts may, if the legislature does not provide some special remedy, enforce such rights by the means within their power." Greenwood v. Freight Co., 105 U. S. 13, 26 L. Ed. 961. Whether injustice has been done the incorporators depends upon the facts of each case in which an alteration or revocation of corporate powers has been attempted. But we do not see that the statute under consideration here is open to any such objection. It was made to take effect 90 days after its passage, and was prospective in its operation. It did not interfere with vested rights or existing contracts, or deprive such corporations of any property possessed by them. The purpose of the act, as shown in the title and in the act itself, was to protect a class of laborers against certain frauds which the legislature supposed might be perpetrated upon them in the process of screening when coal was not weighed until after it had been screened. The act does not require the coal to be weighed when the laborer or miner is paid by the hour or day, or when he is paid by measure, and not by weight. E en when the laborer is paid by the weight of the coal mined, it does not attempt to regulate the price to be paid, but expressly leaves that to be settled by the agreement of the parties. There may be difference of opinion as to the wisdom of such legislation, or as to whether the law will have the effect intended by the legislature. Yet, even if we were convinced that the law was unwise, that would furnish no grounds for refusing to enforce it, "for it is not the province of the courts to supervise legislation and keep it within the bounds of propriety and common sense." Suth. St. Const. § 238. The question of the expediency of such a law is left alone to the legislature. Being satisfied that this control of these corporations engaged in the business of mining coal in this state is authorized by the power reserved in the constitution to "alter, revoke or annul" their charters, we must hold this statute to be valid. A full discussion of this question of the legislative authority to control corporations under this reserve power in the constitution can be found in the following cases: Leep v. Railway Co., 58 Ark. 407, 25 S. W. Rep. 75, 23 L. R. A. 264, 41 Am. St. Rep. 109; Railway Co. v. Paul, 64 Ark. 83, 40 S. W. Rep. 705, 37 L. R. A. 504, 62 Am. St. Rep. 164; *Id.*, 173 U. S. 404, 19 Sup. Ct. Rep. 419, 43 L. Ed. 646; also in 4 Thomp. Corp. §§ 5408-5419; 2 Tied. Cont. of Pers. & Prop. 950.

It is said in the argument that the Central Coal & Coke Company, for whom the defendant was acting when he committed the acts complained of in this prosecution, is a non-resident corporation, organized under the laws of Missouri, and that consequently the provision in the constitution of this state in reference to the alteration, revocation, and annulment of charters of domestic corporations does not apply. And this is, no doubt, true; but, as we said in the cases against the insurance companies, and as the Supreme Court of the United States have often held, the legislature has power to entirely exclude foreign corporations from doing business in this state, and can, of course, dictate the terms upon which such companies may do business here. State v. Lancashire Fire Ins. Co., 66 Ark. 466, 51 S. W. Rep. 633, 45 L. R. A. 348; Waters-Pierce Oil Co. v. Texas, 177 U. S. 28, 20 Sup. Ct. Rep. 518, 44 L. Ed. 657; Paul v. Virginia, 8 Wall. 168, 181, 19 L. Ed. 357. Such a corporation, to quote the language of the Supreme Court of the United States in the case last cited, "having no absolute right of recognition in other states, but depending for such recognition and the enforcement of its contracts upon their assent, it follows as a matter of course that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely, they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as in their judgment will best promote the public interest. The whole matter rests in their discretion." Our state constitution recognizes this right of the state by providing that foreign corporations may be authorized to do business in this state under such limitations and restrictions as may be prescribed by law, "provided that * * * they shall be subject to the same regulation, limitations and liabilities as like corporations of this state, and shall exercise no other or greater powers, privileges or franchises than may be exercised by like corporations of this state." Article 12, § 11. It will be seen from this section of our constitution that the legislature has no power to give a foreign corporation greater powers, privileges, or franchises than may be exercised by like domestic corporations. The power of a state, says the United State Supreme Court, "to impose conditions upon foreign corporations, is certainly as extensive as the power over domestic corporations." "That which a state may do with corporations of its own creation, it may do with foreign corporations admitted into the state." nsurance Co. v. Daggs, 172 U. S. 566, 19 Sup. Ct.

Rep. 284, 43 L. Ed. 556. We are therefore of the opinion that this act is a valid law so far as it affects corporations, either foreign or domestic.

It is said that the defendant in this case is not a corporation, but a natural person. But he was acting for a corporation, and, if the state has the right to forbid certain acts on the part of corporations, it can enforce such law by imposing a penalty upon the agents of corporations who may commit the forbidden act.

The contention that this law unlawfully abridges the right of the laborer to contract cannot be sustained. The right to contract upon the part of the citizen is not unlimited. One has no right to complain that the law will not permit him to make valid contracts with an infant or insane person, or that it will not allow him to make usurious or other forbidden contracts. It is equally plain that, if one deals with a corporation, he can only make such valid contracts with it as the law may authorize it to make. He cannot complain that the powers of such company to contract are limited, and less than those of a natural person. If this law is valid as to corporations, the laborers who deal with such corporations have no right to complain; and much less does the corporation have the right to complain that the law infringes upon the contractual powers of its employees. We are not called on in this case to decide whether this statute is valid as against owners and operators of coal mines, other than corporations. It is sufficient to say that we are of the opinion that so much of the statute as is questioned in this case is valid as to corporations owning and operating coal mines in this state. That being the only question presented on this appeal, the judgment of the circuit court must be affirmed.

NOTE.—*Power of State to Control and Abridge the Right of a Corporation Under the "Reserve" Power.*—Ever since Justice Story, in the Dartmouth College case, laid down the rule that an unreserved grant to do business as a corporation was a contract between the state and the corporation thus created, which could not be impaired by subsequent legislation affecting it, every state has made it a necessary provision, in the charter of every corporation created under its laws, that the state reserved the right to amend, alter or repeal the same. The controversy has therefore drifted from the question whether the Dartmouth College case is good law (whether good or bad, however, it has become the law of the land by the constant adherence of the supreme court), to the more interesting and equally difficult question: How far the state can go under the reserved power? In Inland Fisheries v. Water Power Co., 104 Mass. 446 (affirmed 15 Wall. 500), Mr. Justice Gray, in speaking of the legislative reservation to alter, amend or repeal a charter of incorporation, said: "The extent of the power reserved by such an enactment has been the subject of some diversity of judicial opinion, and a definition of its extreme limit is not necessary to this case. It is sufficient now to say that it is established by adjudications which we cannot disregard, and the principles of which we fully approve that it at least reserves to the legislature the authority to make any alteration or amendment to a charter granted subject to it that will not defeat or substantially impair the object of the grant, or any rights which have vested under it, and that the legislature may deem necessary to secure either that object or other public or private rights."

We may gather together all the important cases on this question as follows: In Shield v. Ohio, 95 U. S. 104, 24 L. Ed. 352, it was held that an alienation in a charter of a corporation, made by the state, in the exercise of its reserved power, must be reasonable and made in good faith, and be consistent with the scope and object of the act of incorporation. In this case the legislature of Ohio passed an act prescribing the rates for the transportation of passengers by a company organized under the laws. The court held that this act impaired no constitutional right of the corporation. Justice Swayne said: "There is a material difference between such an artificial creation and a natural person. The latter can do anything not forbidden by law. The former can do only what is authorized by its charter. * * * It is urged that the franchise here in question was property held by a vested right, and that its sancity, as such, could not be thus invaded. The answer is *consensus facit jus*. It was according to the agreement of the parties. The company took the franchise subject expressly to the power of alteration or repeal by the general assembly. There is, therefore, no ground for just complaint against the state. The power of alteration and amendment is not without limit. Sheer oppression and wrong cannot be inflicted under the guise of amendment or alteration. Beyond the sphere of the reserved powers, the vested rights of property of corporations, in such cases, are surrounded by the same sanctions and are as inviolable as in other cases." The case of Miller v. Railroad, 21 Barb. (N. Y.) 513, shows the limitation of this power from the other side. In that case the legislation, under the reserved power of alteration, required the company which had been previously incorporated to construct a highway across their road. The work was expensive and of no benefit to the company. The act imposing the burden was held to be void. Again, on the other hand, in Mayor v. Railroad, 109 Mass. 103, the legislature had passed an act requiring the railroad companies therein named to unite in a passenger station in the city of Worcester (the place to be fixed as provided), to extend their tracks in the city to the Union Station, and after the extension to discontinue parts of their existing locations. The act was held to be constitutional and valid, being a reasonable exercise of the right reserved to the legislature to amend, alter or repeal the charters of these companies. In Orr v. Bracken County, 81 Ky. 593, it was held that the right to amend the charter may be expressly reserved; but that right does not confer the power of taking from those having a right to select their officers under the charter, that right, and placing it in the hands of stockholders who, by reason of the increased power conferred by the amendment, are enabled to control the corporation. So also to same effect: Buffalo R. R. v. Dudley, 14 N. Y. 336. Where the legislature has the same power to modify an act of incorporation, before rights have accrued under it, where the modification imposes no additional burdens on the corporation, as it would have to modify any other statute. Jeffersonville R. R. v. Gabbert, 25 Ind. 431. In Sage v. Dillard, 54 Ky. 341, it was held that a provision of a charter of a corporation whose membership consists of trustees only, that the legislature may alter, repeal or amend

it, does not authorize an amendment increasing the number of trustees, since the reservation only gave the power to amend the charter as between the original parties, and did not authorize the bringing in of new parties. In a later case in Maryland, where an act incorporating a railroad reserved to the state the right to alter, repeal or annul the same at pleasure, and an act was subsequently passed reducing the rates which the company was authorized to charge, a subsequent change of rates exceeding those specified was held to be unlawful. State v. Consolidation Coal Co., 46 Md. 1. In Detroit v. Plank Road Co., 43 Mich. 140, it was held that the reserved right to amend the charter of a corporation will not authorize the legislature to add requirements that would be inconsistent with constitutional provisions, as by depriving it of its property without due process of law." So also as sustaining the same general proposition of law: Miller v. Railroad, *supra;* Macon R. R. v. Gibson, 85 Ga. 1, 21 Am. St. Rep. 135. In an early Minnesota case, where an act granting a ferry charter reserved the right of amendment and repeal, it was held that such charter, though providing that no other ferry should be established within two miles of the one authorized, might be amended by limiting the exclusive right to a quarter of a mile along the shore. Perrin v. Oliver, 1 Minn. 202. In Buckwalter v. Bridge Co., 38 Pa. St. 281, it was held that a corporation which accepts a charter cannot thereafter deny the authority of the legislature to make certain provisions for the performance of certain acts by the corporation as a condition to the grant of corporate franchises. The case of Charlotte, etc. Co. v. Gibloes, 27 S. Car. 385, 4 S. E. Rep. 49, holds that the general assembly had unlimited power to amend the charter so obtained, provided the amendments did not go beyond regulation, supervision and control of the corporation. In this case the court held valid a placing the railroad under the supervision of a state officer, and dividing the burden of paying the officer's salary between the different railroad companies of the state. In Thorpe v. R. R., 27 Vt. 140, 62 Am. Dec. 625, the court makes this broad statement of the rule, —that, excepting the prohibition against taking private property without compensation imposed by the state constitution and the provisions of the federal constitution prohibiting the passage of laws impairing the obligation of contracts, there is no restriction on the legislature's powers to alter or repeal the charter of a private corporation.

One of the most famous instances in which this question is involved is in what is known as the Sinking-Fund Cases, 99 U. S. 700. In this case an act of congress required of the Central Pacific Railroad Company and the Union Pacific Railroad Company a deposit of one-half of their gross earnings as a sinking fund for the protection of bondholders and creditors, and to provide a fund for the ultimate redemption of existing obligations. The court, through Chief Justice Waite, held the establishment of this fund to be a reasonable regulation of the administration of the affairs of the companies, promotive alike of the interests of the public and of the corporators, and was warranted under the authority which congress had, by way of amendment, to change or modify the rights, privileges, and immunities granted to it. Three strong dissenting opinions, in which this question is well thrashed over, were filed by Justices Field, Strong and Bradley. Justice Field's argument is especially brilliant and conclusive. He says in one place: "There has been much discussion and great difference of opinion on many points as to the meaning and effect of a similar reservation in statutes of the states, but on the point that it does not authorize any interference with vested rights all the authorities concur. And such must be the case, or there would be no safety in dealing with the government where such a clause is inserted in its legislation. It could undo at pleasure everything done under its authority, and despoil of their property those who had trusted to its faith."

JETSAM AND FLOTSAM.

LIABILITY OF ESTATE FOR LIBELOUS STATEMENTS IN TESTATOR'S WILL.

An exceedingly peculiar case is said to have been before the Orphans' Court of Pittsburg, Pa., on November 18th for decision. It was shown that the will of Rev. Father O. P. Gallagher contained a statement to the effect that one Brady had received over $3,000 from the testator for clothing, maintenance, education, etc., and had promised to repay it, but had not paid a dollar, and that the testator had no intention of releasing said debt, and had bequeathed the same to James Corcoran and Marshall Gallagher to collect for their own use. Brady, who is a lawyer in Cleveland, thereupon filed a petition asking that the estate be held responsible for the libel in the sum of $50,000. A demurrer was filed because of Gallagher's death, but the court overruled the demurrer, Judge Hawkins holding that the right of action did not abate with the death of the testator, because it had not accrued until after the death and publication of his will. This action certainly seems to be without precedent.

JURIES AS TRIERS OF FACT.

We are indebted to the curtesy of the secretary of the Ohio State Bar Association for a copy of the proceedings of the last convention. We were much interested in the remark of the Hon. D. J. Nye, in his address to the convention in which he defends the competency of the jury as a tribunal to try the facts. He says:

"It is sometimes claimed that the oratory and reasoning of an advocate formerly had more weight with court and jury than at the present time. If that be true it does not prove that the art of oratory is dying out or growing less. Jurors of to day are better educated and more intelligent. With our excellent system of public schools and colleges, the common people from whom the jurors are selected, are well educated. They keep abreast of the times with all the general literature of the day, and they are well informed upon the general principles of law and science. For that reason, they are convinced more by the logic and sound argument of the advocate than they are by flights of oratory not based on reason. The lawyer who depends upon winning his cause before a modern jury by an attempt at oratory without the facts in his favor will make a signal failure in such an attempt.

"After an experience of nearly ten years upon the bench, and presiding at the trial of a large number of jury cases, I can truly say that I have received but very few verdicts where I would not have rendered a like decision myself. The more I see of jury trials the more I believe in the jury system, and the more faith I have in the ability and integrity of the common people or the class from which jurors are selected, to determine the questions of fact in the trials of contested cases."

THE STATUS OF A BICYCLE AS A CARRIAGE.

The *status* of a bicycle as a carriage within the

meaning of acts relating to tolls is somewhat uncertain. That it is a creature *sui generis* was no doubt felt by the legislature when they thought it necessary to declare expressly, by the Local Government Act, 1888, sec. 85, that it is a carriage within the meaning of the Highway Acts; although this had, as a matter of fact, been decided by the courts when, many years before the above-mentioned act was passed, a bicyclist was held to have been lawfully convicted under the Highway Act, 1835, of furious driving. Taylor v. Goodwin, 4 Q. B. D. 228. In Simpson v. Teignmouth, etc. Bridge Co., decided last week, Wright, J., had to decide on the liability of a bicycle to toll as a "carriage" within the meaning of a local act enabling tolls to be demanded; one of the authorized tolls was "for every coach, chariot, hearse . . . gig, whisky-car, chair, or coburg, and for every other carriage hung on springs, the sum of 6 pence, and for each horse or beast of draught drawing the same the sum of 2 pence." Much serious expert evidence was adduced on the question whether a bicycle is "hung on springs" or not, and the learned judge formally decided that it is; he based this decision on the fact that the saddle is supported by springs; he also decided that a bicycle is a carriage within the act in question. But having regard to the provisions of the act as to the "beast of draught drawing the same," he further held that a bicycle, not being intended for animal draught, was not liable to toll. A reference in the taxing section to the drawing of the carriages by animals is therefore an important point to be considered in deciding the liability of a bicycle. No such reference occurred in the act under consideration in the recent case of Cannon v. Earl of Abingdon, 48 W. Rep. 470, in which a bicycle was held liable to a toll imposed upon certain specified kinds of carriages "or other carriage whatsoever." Williams v. Ellis, 5 Q. B. D. 175, was a still stronger decision in favor of the bicyclist than Simpson v. Teignmouth, etc. Bridge Co. There a toll was imposed upon beasts drawing certain specified kinds of carriages, and by a separate clause a heavy toll of five shillings was put upon "every carriage of whatever description, and for whatever purpose, which shall be drawn or impelled or set or kept in motion by steam or other power or agency than being drawn by any horse or other beast." In this case Lush and Bowen, JJ., seem to have gone far in favor of a bicycle in holding that the carriages referred to in the latter clause must be *ejusdem generis* with those specified in the former. The recent decision of Wright, J., is certainly as well founded as that in Williams v. Ellis; but as it was given in a special case stated in an action, and is probably of some importance to the defendants, it is possible that it may be heard of again. —*Solicitor's Journal.*

BOOK REVIEWS.

FROST ON GUARANTY INSURANCE.

That the law is rapidly specializing is evidenced by such works as we have before us for review at this time. The Law of Guaranty Insurance, which includes all forms of compensated suretyship, is a new branch of law which has had its whole development practically within the last twenty five years, and chiefly within the last ten years. Before 1840 there were no companies organized for protection against loss by dishonesty of employees even in England, and before about 1880 none in this country. Now there are more than forty large companies having general offices in this country, with agencies in all the cities and towns of any prominence, and a business amounting to hundreds of millions of dollars. In this work the author presents both the theory and practice of all the various branches of guaranty insurance, covering all forms of compensated suretyship, such as official and private fidelity bonds, building bonds, court bonds and credit and title insurance. For this task Mr. Frost is peculiarly well fitted, as for many years he has been associated on one side or the other of many cases involving contracts of guaranty insurance, and has that practical experience of the side of the company, as well as of the insured, that enables him to analyze the cases impartially, and with a proper sense of proportion. All the methods known to author or printer have been used to make the book useful and usable; the sections are numbered continuously, catch words are in full-faced type, references are made to the "Reporters" as well as to the official reports, and the index is made with care and precision. The book is printed in the best style of the University Press, and bound in the best law sheep. Published by Little, Brown & Co., Boston, Mass.

BOOKS RECEIVED.

A Treatise on the American Law of Real Property. By Emory Washburn, LL. D. Bussey Professor of Law in Harvard University; author of a Treatise on the American Law of Easements and Servitudes. Sixth Edition, by John Wurts, M. A., LL. B. Professor of the Law of Real Property in the Yale Law School; Author of Index-Digest of the Florida Reports. Volumes 1, 2 and 3. Boston. Little, Brown & Company, 1902. Sheep. Price, $18.00. Review will follow.

American Electrical Cases (cited Am. Electl. Cas.). Being a Collection of Important Cases (excepting patent cases) decided in the state and federal courts of the United States from 1873 on subjects relating to the Telegraph, the Telephone, Electric Light and Power, Electric Railway, and other practical uses of Electricity, with Annotations. Edited by William W. Morrill. Volume VII. 1897 1901. Albany, N. Y. Matthew Bender, 1902. Sheep. Price, $6.00. Review will follow.

HUMORS OF THE LAW.

A canvasser calling at an English store, which bore the sign of Smith & Co., asked if Mr. Smith was in. "No," was the reply. "Will he be in soon?" "I don't think he will." "How long has he been out?" "About a hundred and fifty years." This illustrates the custom in England of retaining old names for mercantile houses.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts

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1. ACCORD AND SATISFACTION — Affecting Written Contract.—The obligation of a written contract is not extinguished by an oral agreement for accord and satisfaction at a future date.—Arnett v. Smith, N. Dak., 88 N. W. Rep. 1037.

2. ACTION—A Motion to Vacate Order of Consolidation.—A motion to vacate an order consolidating actions, after acquiescing therein for seven months, held too late.—Scott v. Farmers' & Merchants' Nat. Bank, Tex., 66 S. W. Rep. 485.

3. ADMIRALTY—Sureties in Stipulation for Release.—Sureties in a stipulation for the release of a libeled vessel become parties to the suit, and are bound by a decree rendered on an amended libel.—Fairgrieve v. Marine Ins. Co., U. S. C. C. of App., Eighth Circuit, 112 Fed. Rep. 364.

4. APPEAL AND ERROR — Abatement by Death.—Under Code, § 4150, providing that the death of a party does not cause the proceeding in an action to abate, the court may determine an appeal after a party has died, and before substitution has been made.—Williams v. Williams, Iowa, 88 N. W. Rep. 1057.

5. APPEAL AND ERROR—Affidavit of Trial Clerk that Record is Incorrect.—The court of appeals cannot receive and consider affidavits and certificates of the clerk of the trial court that the record on appeal is incorrect.—Southern Pac. Co. v. Winton, Tex., 66 S. W. Rep. 477.

6. APPEAL AND ERROR—Assignment of Error Not Made in Trial Court.—An assignment complaining of a verdict on a ground not called to the attention of the trial court on the motion for new trial cannot be considered.—Von Carlowitz v. Bernstein, Tex., 66 S. W. Rep. 484.

7. APPEAL AND ERROR — Indexing the Record.—Where an appellant fails to comply with supreme court rule No. 3 (55 N. E. Rep. iv.) relative to indexing the record on appeal, the appeal will be dismissed.—State v. Lankford, Ind., 62 N. E. Rep. 624.

8. APPEAL AND ERROR—Motion to Advance.—Where an appeal is taken from the circuit court, and the complaint for a new trial for newly-discovered evidence is afterwards filed in the circuit court, it will not be considered in the appellate court on a motion to advance the appeal.—Hogue v. State, Ind., 62 N. E. Rep. 656.

9. APPEAL AND ERROR—Reinstating Injunction Pending Appeal.—Under Civ. Code Proc. § 747, the court of appeals has no power, upon appeal from an order dissolving an injunction on final hearing, to reinstate the injunction pending the appeal, except after notice.—African Baptist Church v. White, Ky., 66 S. W. Rep. 419.

10. APPEAL AND ERROR—Reversing Order in Special Proceeding.—Order of appellate division, reversing final order in a special proceeding, held reviewable in the court of appeals.—*In re* Board of Education of City of New York, N. Y., 62 N. E. Rep. 566.

11. APPEAL AND ERROR — Statement in Bill of Exceptions That it Contains All the Evidence.—Where there is no certificate that the bill of exceptions contains all the evidence, and a statement to that effect is impeached by the evidence itself, the statement that the bill contains all the evidence will be treated as false.—Dorer v. Hood, Wis., 88 N. W. Rep. 1009.

12. APPEARANCE—Filing Petition to Reverse Ruling.—Under the Ohio practice, after a defendant has made seasonable objection to the jurisdiction over his person, which has been erroneously overruled, his pleading to the merits or filing a petition in error to reverse such ruling does not amount to a general appearance, nor cure the error.—Baltimore & O. R. Co. v. Freeman, U. S. C. C. of App., Sixth Circuit, 112 Fed. Rep. 237.

13. ASSIGNMENTS — Wife's Cause of Action for Death of Husband.—Under Rev. St. arts. 3025, 4647, a surviving wife's cause of action for negligence resulting in the death of her husband is not assignable before suit is brought thereon.—Southern Pac. Co. v. Winton, Tex., 66 S. W. Rep. 477.

14. ASSIGNMENT FOR BENEFIT OF CREDITORS—Expense of Creditors.—Rev. St. 1898, § 1698b, means that where an examination under the statute is had for the benefit of creditors, it shall be at the expense of creditors; otherwise, at the expense of the estate.—*In re* Lange & Leihammer Mfg. Co., Wis., 88 N. W. Rep. 1016.

15. ASSOCIATIONS — Remedies Against.—Pub. Acts 1897, No. 25, § 1, authorizing suit by or against unincorporated voluntary associations, etc., is not invalid, in allowing two remedies against such an association and only one in its favor.—United States Heater Co. v. Iron Moulders' Union of North America, Mich., 88 N. W. Rep. 889.

16. ATTORNEY AND CLIENT—Liability of Debtor in Paying Debt to Attorney.—Where an attorney, under an agreement with his client, is entitled to a share of a certain claim, but has no lien thereon, the debtor is relieved from all liability by paying the debt to the client.—Barnabee v. Holmes, Iowa, 88 N. W. Rep. 1098.

17. BANKRUPTCY — Effect on State Insolvency Laws.—The insolvency laws of the state are suspended by the bankruptcy act, and proceedings commenced thereafter are null and void.—*In re* Macon Sash, Door & Lumber Co., U. S. D. C., S. D. Ga., 112 Fed. Rep. 328.

18. BANKRUPTCY—Lien Against Trustee of Purchaser.—A reservation of title, or a lien, in an unrecorded contract of conditional sale, held invalid under the laws of Nebraska to create a lien as against the trustee of the purchaser in involuntary bankruptcy.—*In re* Pekin Plow Co., U. S. C. C. of App., Eighth Circuit, 112 Fed. Rep. 308.

19. BANKRUPTCY—Right of Bankrupt to Claim Exemptions.—Under the constitution and laws of Alabama, a waiver of exemptions in a note, proved against the estate of the maker in bankruptcy, but which was not previously reduced to judgment, is ineffective, and does not defeat the bankrupt's right to claim his exemptions or give the court of bankruptcy jurisdiction over the exempt property.—*In re* Moore, U. S. D. C., M. D. Ala., 112 Fed. Rep. 289.

20. BANKRUPTCY—Right to Fees for Services.—Attorney's fees cannot be allowed from a bankrupt's estate for services rendered in relation to his application for a discharge.—*In re* Brundin, U. S. D. C., D. Minn., 112 Fed. Rep. 306.

21. BANKRUPTCY—Right of Seller to Recover Goods for Fraud.—The failure of a purchaser of goods to disclose his insolvency to the seller, although he may have known of it, does not constitute fraud which entitles the seller to recover the goods from the purchaser's trustee in bankruptcy.—*In re* Davis, U. S. D. C., S. D. N. Y., 112 Fed. Rep. 294.

22. BANKRUPTCY—Right to Set Off "New Credits."—Bankr. Act 1898, § 60c, entitles a creditor to set off new credits against the preferences he would otherwise be required to surrender before proving his claim, and is not limited in its application to cases where the

trustee sues to recover the preferences.—Peterson v. Nash Bros., U. S. C. C. of App., Eighth Circuit, 112 Fed. Rep. 311.

23. BANKRUPTCY—Right to Sue for Conversion.—Where a sale of personal property by a bankrupt is insufficient to pass title under Bankr. Act 1898, § 67e, the trustee who acquires title thereto, under section 70, may maintain trover therefor.—Lyon v. Clark, Mich., 88 N. W. Rep. 1046.

24. BANKRUPTCY—When Claim Must Have Accrued.—It is not essential to the right to prove a claim against the estate of a bankrupt that it should have existed prior to the bankruptcy, but it is sufficient if it was brought into existence by the filing of the petition.—*In re* Swift, U. S. C. C. of App., First Circuit, 112 Fed. Rep. 315.

25. BENEFIT SOCIETIES — Vested Interest of Beneficiary.—Beneficiary in a certificate in a mutual benefit association has no vested interest therein.—Schoenau v. Grand Lodge A. O. U. W., Minn., 88 N. W. Rep. 969.

26. BILLS AND NOTES—Clauses Affecting Negotiability.—A note containing a clause "that without notice the payee or holder may extend the time of payment of the principal" is not negotiable.—Rosenthal v. Ramoo, Ind., 62 N. E. Rep. 637.

27. BILLS OF EXCEPTIONS — Time of Filing.—Where the time for filing a bill of exceptions is extended "up to" June 28th, a bill on that day is in time.—State v. Flutcher, Mo., 66 S. W. Rep. 429.

28. BREACH OF MARRIAGE PROMISE—Where Plaintiff Knows that Promisor is a Married Man.—A woman cannot maintain an action for breach of a promise of marriage made by a married man, where she knew at the time the promise was made that he was, and had been for many years, notoriously living and cohabiting with another woman as his wife, even though he represented himself to be unmarried.—Davis v. Pryor, U. S. C. C. of App., Eighth Circuit, 112 Fed. Rep. 274.

29. BURGLARY—Possession of Recently Stolen Property.—Possession by defendant of money orders stolen from post office, which had been subsequently filled out, stamped, and signatures forged thereto, and which defendant attempted to pass, held admissible in evidence in a prosecution for breaking and entering the post office from which they were stolen.—Considine v. United States, U. S. C. C. of App., Sixth Circuit, 112 Fed. Rep. 342.

30. CARRIERS—Duty to Trespassers on Train.—One who boarded a freight train at a watering station, and jumped or fell from it while in rapid motion, held to have voluntarily assumed the risk.—Cunningham v. Ft. Worth & D. C. Ry. Co., Tex., 66 S. W. Rep. 467.

31. CARRIERS—Liability for Ice on the Steps.—A street car company held required to exercise highest degree of care to keep its platforms and steps in a safe condition with respect to snow and frost.—Herbert v. St. Paul City Ry. Co., Minn., 88 N. W. Rep. 996.

32. CONFUSION OF GOODS—Recovery from Common Mass.—In replevin for property which has innocently been mingled with defendant's property of the same nature and quality as that sued for, plaintiff may recover the quantity to which he is entitled from the common mass, if the separation may be made without injury.—Rust Land & Lumber Co. v. Isom, Ark., 66 S. W. Rep. 434.

33. CONSTITUTIONAL LAW — Legislative Powers in Courts.—Rev. Codes, §§ 2440, 2441, authorizing district courts to exclude territory from the limits of cities in certain cases, are unconstitutional, as vesting legislative powers in the courts.—Glasspell v. City of Jamestown, N. Dak., 88 N. W. Rep. 1023.

34. CONTINUANCE—For Absence of Witnesses.—Where defendant has shown an utter lack of diligence to procure absent witnesses, it is not error to refuse his application for continuance.—Corley v. State, Tex., 66 S. W. Rep. 458.

35. CONTRACTS—Agreement to Select Deputies of Public Officer.—A contract with a candidate for public office to pay him certain sums for the privilege of selecting his deputies and receiving his fees held void.—Willis v. Weatherford Compress Co., Tex., 66 S. W. Rep. 472.

36. CONTRACTS —Contracts Providing for Payment on Demand.—Suit cannot be maintained on an instrument providing for the payment of uncertain sums of money on demand until a demand has been made.—*In re* Allen's Estate, Iowa, 88 N. W. Rep. 1091.

37. CONTRACTS—Signing in Duplicate.—Where contracts purporting to be duplicates, but differing materially, are signed and sent to one, and he signs but one and returns it, this is the binding contract.—Baird v. Harper, Del., 51 Atl. Rep. 141.

38. CORPORATIONS—Frauds in Stockholder's Contract with Corporation.—A contract made with a stockholder in a mining corporation through directors to whom such stockholder had assigned stock in nominal amounts, in order to make them eligible as directors, is in effect a contract by the stockholder with himself, and, if designed to produce a profit for the stockholder, is a fraud on the corporation.—Jones v. Green, Mich., 88 N. W. Rep. 1047.

39. CORPORATIONS—Laches in Neglecting to Attack the Validity of a Transfer of Property.—A creditor of a corporation cannot attack the validity of a transfer of its property to another corporation after a delay of three or four years, during which time the transferee had contracted debts to others and become insolvent.—Anthony v. Campbell, U. S. C. C. of App., Eighth Circuit, 112 Fed. Rep. 212.

40. CORPORATIONS—Right of Executive Officers to Bind Corporation.—The board of directors of a corporation may delegate authority to the executive officers to make contracts of a certain class, as well as to make a particular contract, and the corporation may be bound by their consent to a contract implied by law from a course of dealing.—Salem Iron Co. v. Lake Superior Consol. Iron Mines, U. S. C. C. of App., Third Circuit, 112 Fed. Rep. 239.

41. CORPORATIONS — Right to Compel Director to Transfer Property Intended for Corporation.—Where a director received a deed to lands intended for the corporation, but outside of the power of the latter to acquire, it cannot compel a conveyance thereof from him.—Scott v. Farmers' and Merchants' Nat. Bank, Tex., 66 S. W. Rep. 485.

42. COSTS — Clerk's Charge for Loan of Original Transcript.—The clerk of the court of appeals may charge for a copy of the transcript, though no copy was in fact made, if there was, instead, a loan of the original transcript,—Shackelford v. Phillips, Ky., 66 S. W. Rep. 419.

43. COUNTIES— Liability for Loans. — The county treasurer held not responsible to plaintiff, who had loaned money to the county, on account of the money paid into the treasury by him.—Dotson v. Fitzpatrick, Ky., 66 S. W. Rep. 403.

44. COURTS—Presumption of Jurisdiction. — Where the record of a court of general jurisdiction is silent about a matter necessary to confer jurisdiction, the existence of such matter, nothing appearing to the contrary, will be presumed.—State v. Baty, Mo., 66 S. W. Rep. 428.

45. COVENANTS—Liability of Heirs and Devisees on Ancestor's Covenants.—Heirs and devisees are liable to the extent of the property reaching their hands for a breach of the ancestor's or testator's covenant of warranty of title, the estate having been settled.—McClure v. Dee, Iowa, 88 N. W. Rep. 1093.

46. COVENANTS—One Sued on Covenant May Have Judgment Rendered Against His Grantors.—Where the grantee in a deed is sued by her grantee of the same premises for breach of her covenant of warranty the land being public school land, and causes her

grantors to be impleaded, she is entitledd to judgment against them for the consideration paid by her, with interest, though no judgment is recovered against her.—Johnson v. Blum, Tex., 66 S. W. Rep. 461.

47. CRIMINAL EVIDENCE—Tracing Signature on Hotel Register.—A tracing of signatures on a hotel register held admissible as secondary evidence, where the leaf containing such signatures was shown to have been removed by some person unknown.—Considine v. United States, U. S. C. C. of App., Sixth Circuit, 112 Fed. Rep. 342.

48. DAMAGES—Doctor's Fees as Damages.—Evidence as to doctors' bills paid by plaintiff was not admissible, in the absence of any allegation of any such special damages in the petition.—Illinois Cent. R. Co. v. Hanberry, Ky., 66 S. W. Rep. 417.

49. DEATH—Evidence as to Earnings of Deceased.—In an action by a surviving wife against a railroad company for the negligent killing of her husband, her testimony as to his earnings and expenses is competent.—Pearl v. Omaha & St. L. R. Co., Iowa, 88 N. W. Rep. 1078.

50. DEATH—Excessive Damages for the Death of Child.—A verdict for $15,000 for the death of a girl 14 years of age is so excessive as to indicate passion or prejudice.—Board of Internal Improvement for Lincoln County v. Moore's Admr., Ky., 66 S. W. Rep. 417.

51. DEATH—Excessive Damages for Death of Son.—Where, in an action against a railroad company by a mother for the negligent killing of her married son, she is 73 years old, living with her married daughter, and the son, earning $100 a month, had contributed $50 per year for her support, a verdict of more than $1,000 is excessive.—Southern Pac. Co. v. Winton, Tex., 66 S. W. Rep. 477.

52. DIVORCE—Substituted Service on Resident Defendant.—In an action by the wife for a divorce, her residence in the county gave the court jurisdiction of the subject-matter, and, a warning order having been made against defendant upon an affidavit filed by plaintiff, a judgment granting the relief will not, in the absence of fraud, be declared void upon the ground that defendant was in fact not a non-resident. Bailey v. Bailey, Ky., 66 S. W. Rep. 414.

53. DOMICILE—Right of Wife to Establish Separate Domicile.—A married woman, who has been unlawfully deserted by her husband, who has gone to parts unknown and ceased to contribute to her support, may establish a separate domicile, and may acquire citizenship in another state, which will entitle her to maintain an action in a federal court in the state of her martial residence. — Town of Watertown v. Greaves, U. S. C. C. of App., First Circuit, 112 Fed. Rep. 183.

54. DOMICILE — Temporary Residence in Another State.—A person does not lose his domicile and citizenship in one State by removing to another to reside temporarily, and with the intention of returning to his former residence at a definite time in the future.—Collins v. City of Ashland, U. S. D. C., E. D. Ky., 112 Fed. Rep. 175.

55. EJECTMENT—Authorizing Recovery by Unsuccessful Defendant.—Rev. Stat. 1898, § 3096 *et seq.* (Improvement Act), authorizing a recovery by an unsuccessful defendant in ejectment for improvements, is not unconstitutional.—Dorer v. Hood, Wis., 88 N. W. Rep. 1009.

56. EJECTMENT — Right of Mortgagor to Maintain Ejectment Without Paying Mortgage.—Where mortgagees take possession under an unlawful foreclosure by advertisement, the mortgagor, who is the owner of the land, can maintain ejectment without paying the mortgage debt.—McClory v. Ricks, N. Dak. 88 N. W. Rep. 1042.

57. EMBEZZLEMENT—Moneys of United States in Possession.—One having moneys of the United States in his possession, who willfully fails to deposit the same when required by a general regulation of the treasury department, is guilty of embezzlement, under Rev. St. § 5492.—United States v. Dimmick, U. S. D. C., N. D. Cal., 112 Fed. Rep. 350.

58. EMINENT DOMAIN—Prior Location or Survey as Commencement of Condemnation Proceedings. — Prior location or survey in condemnation proceedings for right of way, not being provided for by statute, is not a commencement of such proceedings, so as to give prior right as against another company.—Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., Iowa, 88 N. W. Rep. 1082.

59. EMINENT DOMAIN—Right to Condemn Land of Toll Bridge.—Land belonging to a toll bridge corporation, but not in its actual use or necessary to the exercise of its franchise, may be condemned by a railroad company for its tracks.—Youghiogheny Bridge Co. v. Pittsburgh & C. R. Co., Pa., 51 Atl. Rep. 115.

60. EMINENT DOMAIN—Right to Set Aside Award of Damages.—An assessment of damages for property taken by a city cannot be attacked and set aside by proceedings in error for causes arising after the award of damages.—Hubbard v. City of Hartford, Conn., 51 Atl. Rep. 133.

61. ESTOPPEL—Requisites. — False representations, to work an estoppel, must also be of a nature to lead a reasonably prudent person to the action taken, and must have been acted on in good faith and in ignorance of the truth.—Davis v. Prior, U. S. C. C. of App., Eighth Circuit, 112 Fed. Rep. 274.

62. EVIDENCE—Admissions by Former Owner of a Note.—Admissions by a former owner of a note after transfer thereof are inadmissible as against the holder.—Wangner v. Grimm, N. Y., 62 N. E. Rep. 569.

63. EVIDENCE—Carlisle Tables of Life Expectancy.—The Carlisle tables of life expectancy, as contained in the Enclycopedia Britannica, are properly admitted in an action to recover for negligently causing death, without preliminary proof.—Pearl v. Omaha & St. L. R. Co., Iowa, 88 N. W. Rep. 1078.

64. EVIDENCE—Declarations of Legatees in Will Contests.—Where a will is contested for undue influence, the declarations of the legatee alleged to have exercised the influence are inadmissible, where there are other legatees whose interests will be affected adversely.—Appeal of Carpenter, Conn., 51 Atl. Rep. 126.

65. EVIDENCE—Declarations of Suffering.—Declarations of plaintiff showing present suffering are admissible in an action for personal injuries.—Yeager v. Incorporated Town of Spirit Lake, Iowa, 88 N. W. Rep 1095.

66. EVIDENCE— Parol Evidence as to Payment of Note.—In an action on a note, the maker of which had written a letter promising to pay a certain note, parol evidence was admissible to show that the letter referred to the note in suit.—McConaughy v. Wilsey, Iowa, 88 N. W. Rep. 1101.

67. EVIDENCE—Photographs Competent to Prove Identity.—Photographs of defendant and his alleged confederates held properly used to enable witnesses to identify them as persons seen together at the place and time of the commission of the crime charged.—Considine v. United States, U. S. C. C. of App., 112 Fed. Rep. 342.

68. EVIDENCE—Proof of Acts of City Council.—Though as a general rule records, ordinances, and resolutions are not the only evidence of acts of city council, where no record is kept, the next best evidence is admissible.—Brown v. City of Webster City, Iowa, 88 N. W. Rep. 1070.

69. EVIDENCE—Proving Laws of Other States.—Notice cannot be taken of laws of another state not proved.—Washburn Crosby Co. v. Boston & A. R. R., Mass., 62 N. E. Rep. 590.

70. EVIDENCE—Understanding Language as Necessary to Confession.—To make confession admissible, witness must understand the language in which it was given.—Cortez v. State, Tex., 66 S. W. Rep. 453.

71. EXCHANGE OF PROPERTY—Damages for Breach of Agreement to Exchange.—Measure of damages for breach of contract to exchange wheat held to be the difference between the value of the seed wheat when and where it was to be delivered and the market value of plaintiff's wheat at the time of the refusal of defendant to accept the storage tickets.—Talbot v. Boyd, N. Dak., 88 N. W. Rep. 1026.

72. EXECUTORS AND ADMINISTRATOR—Presumption as to Order of Publication.—Under Code, § 3304, the court will not presume the making of an order of court directing the publication of the appointment of an executor merely because publication was in fact made.—McConaughy v. Wilsey, Iowa, 88 N. W. Rep. 1161.

73. EXECUTORS AND ADMINISTRATORS—Right of Ancillary Administrator.—An ancillary administrator has the same power to pledge the assets of the estate for the purposes of the estate that a domestic administrator has.—Smith v. Second Nat. Bank, N. Y., 62 N. E. Rep. 877.

74. EXECUTORS AND ADMINISTRATORS—What Contracts are Binding on Estate of Deceased Parties.—Contract purporting to be by individuals doing business under firm name, and signed in such firm name, held not binding on the estate of a deceased partner, merely because counsel for his administrators was consulted in its preparation.—Baird v. Harper, Del., 51 Atl. Rep. 141.

75. FACTORS AND BROKERS—Relation Between Broker and Customer.—Under the law of Massachusetts the relations between a broker and a customer for whom he has purchased stocks on a margin are those of parties to an executory contract, and not those of pledgee and pledgor.—*In re* Swift, U. S. C. C. of App., First Circuit, 112 Fed. Rep. 315.

76. FALSE PRETENSES—Larceny by False Pretenses.—One falsely representing that he owned lots on which he would erect a soap factory, thereby coercing an adjoining landowner to purchase them, held not guilty of larceny by false pretenses, under Pen. Code, § 528.—People v. Wheeler, N. Y., 62 N. E. Rep. 872.

77. FEDERAL COURTS—Jurisdiction of Hawaiian Appeals.—An appeal lies from the district court of the United States for the territory of Hawaii to the circuit court of appeals in the Ninth circuit in an admiralty suit.—Wilder's S. S. Co. v. Low, U. S. C. C. of App., Ninth Circuit, 112 Fed. Rep. 161.

78. FEDERAL COURTS — Diverse Citizenship. — If diversity of citizenship exists at the time suit is brought in a federal court, jurisdiction will not be ousted by the fact that the plaintiff has since become a citizen of the same state as defendant.—Collins v. City of Ashland, U. S. D. C., E. D. Ky., 112 Fed. Rep. 175.

79. FIRE INSURANCE—Evidence as to Plaintiff's Burning Other Property.—Under Sanb. & H. Dig. § 2959, evidence that plaintiff in an action on a fire policy had been indicted for the burning of a house is not admissible.—Stanley v. Ætna Ins. Co., Ark., 66 S. W. Rep. 422.

80. FIRE INSURANCE—False Statements in Application.—Under Code, ch. § 4, 1741, an insurer may not show the falsity of statements in an application or representation of the assured, where such application or representation is not attached to the policy.—Corson v. Iowa Mut. Fire Ins. Assn., Iowa, 88 N. W. Rep. 1066.

81. FRAUD—Sale of Patent Rights.—In an action for fraudulent representations in the sale of a patent right, it is incumbent on plaintiff to show defendant knew or had reason to believe their falsity.—Mentzer v. Sargeant, Iowa, 88 N. W. Rep. 1068.

82. FRAUDS, STATUTE OF—Verbal Transfer of Logging Contract.—Logging contract, verbally transferred as security for supplies furnished, held not void under the statute of frauds.—Burton v. Gage, Minn., 88 N. W. Rep. 997.

83. GAMING—Compelling Division of Profits.—Equity will not entertain a bill for an accounting of profits in the case of a partnership in the business of "book making," or of making wagers on horse races; the business being illegal.—Central Trust & Safe Deposit Co. v. Respass, Ky., 66 S. W. Rep. 421.

84. HABEAS CORPUS—Defects in Form of Commitment.—Where sufficient ground for the detention of a prisoner is shown, he cannot be discharged on a writ of *habeas corpus* because of defects or irregularities in the form of commitment.—Chow Loy v. United States, U. S. C. C. of App., First Circuit, 112 Fed. Rep. 854.

85. HEALTH—Liability of Railroad for Injury by Employee with Smallpox.—Railroad company, taking charge of an employee afflicted with smallpox, held to owe to each individual member of the community the duty to prevent the spread of the disease, and hence liable to a person injured by the failure to perform such duty.—Missouri, K. & T. Ry. Co. of Texas v. Wood, Tex., 66 S. W. Rep. 449.

86. HOMESTEAD—Part Use for Business Purposes.—Where defendant used a portion of his lot for business purposes and a portion for residence purposes, a conveyance of the business portion to his wife did not estop him from afterwards claiming the entire lot as a homestead.—Berry v. Meir, Ark., 66 S. W. Rep. 439.

87. HOMICIDE—Self-Defense Where Defendant Commences Conflict.—Defendant was not prejudiced by an instruction not to acquit on the ground of self-defense, if defendant commenced the conflict with intent to inflict on deceased some bodily harm.—Williams v. Commonwealth, Ky., 66 S. W. Rep. 401.

88. HUSBAND AND WIFE—Liability of Wife's Estate for Her Necessaries.—In an action against the estate of a wife for necessary personal services rendered to her, it is not necessary to show that her husband was unable or refused to pay for such services.—Von Carlowitz v. Bernstein, Tex., 66 S. W. Rep. 464.

89. HUSBAND AND WIFE—Necessity of Wife Joining in Conveyance of Community Property.—A deed by a husband of an undivided 110 acres out of a 310-acre tract owned by him and his wife as community property, and occupied by them as a home, will pass the title thereto, though the wife does not join therein.—Mass v. Bromberg, Tex., 66 S. W. Rep. 468.

90. HUSBAND AND WIFE — Tender of Goods When Received.—In an action by a married woman for the recovery of money paid for goods furnished by defendant to her husband as its agent, held that a tender of the goods by plaintiff after a verdict in her favor did not constitute a ground for a new trial.—American Splane Co. v. Barber, Ill., 62 N. E. Rep. 597.

91. INHERITANCE TAX—Estimating Values.—Commissions of testamentary trustee should be deducted in estimating value of estate for transfer tax.—*In re* Gihon's Estate, N. Y., 62 N. E. Rep. 561.

92. INJUNCTION—Mandatory Temporary Injunction.—A mandatory temporary injunction, transferring possession of property, is improper.—Minneapolis & St. L. R. Co. v. Chicago, M. & St. P. R. Co., Iowa, 88 N. W. Rep. 1082.

93. INTERNAL REVENUE—Right to Fix Stamp After Delivery.—Under the United States internal revenue law of 1898, a stamp may be affixed to an instrument at any time before such instrument is offered in evidence.—Harvey v. Wieland, Iowa, 88 N. W. Rep. 1077.

94. INTERPLEADER—Right to Compel.—When a judgment recovered by an assignee is attached by a creditor of the assignor, who claims that the assignment was fraudulent, the rights of the judgment debtor may be fully protected in such proceeding, and hence, under Code, art. 9, § 17, he cannot require the creditor and assignee to interplead.—Fetterhoff v. Sheridan, Md., 51 Atl. Rep. 123.

95. JUDGMENT—Extraterritorial Validity.—When the final judgment of a state court is offered in evidence in a proceeding in a court of the United States, its validity cannot be questioned for errors which do not

affect the jurisdiction of the court which rendered it.—United States v. Eisenbeis, U. S. C. C. of App., Ninth Circuit, 112 Fed. Rep. 190.

96. JUDGMENT—Reply to Answer of Res Judicata.—A reply to an answer of *res judicata*, in an action against an indorser on a note held not subject to demurrer as alleging no facts which could not have been presented and considered in a prior action on the note.—Peck v. Easton, Conn., 51 Atl. Rep. 134.

97. JUDGMENT—Right to Lien.—Where a judgment debtor has a bare legal title of land, without interest, and the equitable title is in another, the lien in equity does not attach.—Dalrymple v. Security Loan & Trust Co., N. Dak., 88 N. W. Rep. 1033.

98. LANDLORD AND TENANT—Re-entry for Failure of Lessee to Comply with Covenants.—A failure by a lessee to reasonably comply with a covenant of the lease in which the lessor has a valuable interest constitutes a breach of condition which warrants a re-entry, whether such failure is due to inability or merely to neglect.—Boston El. Ry. Co. v. Grace & Hyde Co., U. S. C. C. of App., First Circuit, 112 Fed. Rep. 279.

99. LIFE INSURANCE — Effect of False Statement in Application.—A false statement in an application for life insurance as to the time when applicant was last treated by a physician, and the disease for which he was last treated, is fatal to recovery on the policy.—Priestly v. Provident Sav. Co., U. S. C. C., E. D. Pa., 112 Fed. Rep. 271.

100. LIFE INSURANCE—Rights of Assignee.—Assignee of a paid up life policy held to have acquired the beneficial title thereto, though neither the policy nor the instrument assigning it were ever delivered to her.—Appeal of Colburn, Conn., 51 Atl. Rep. 139.

101. LIMITATION OF ACTIONS—Action Against Insolvent Corporation.—The statute of limitations does not run against a person claiming damages for injuries inflicted by an insolvent corporation until its officers indicate to the claimant an intention to repudiate the trust created by law.—Scott v. Farmers' & Merchants' Nat. Bank, Tex., 66 S. W. Rep. 485.

102. MANDAMUS — Motion to Supersede a Writ of Mandamus.—A motion to supersede a writ of *mandamus* admits the facts alleged in the relation.—State v. Supervisors of Town of Clifton, Wis., 88 N. W. Rep. 1019.

103. MARRIAGE—Common-Law Marriage.—A contract between a man and woman competent to contract to become husband and wife, made in good faith and followed by consistent and notorious matrimonial cohabitation, constitutes a valid marriage at common law.—Davis v. Pryor, U. S. C. C. of App., Eighth Circuit, 112 Fed. Rep. 274.

104. MASTER AND SERVANT—Assumption of Risk.—Complaint showing failure to enforce rules of employment, whereby plaintiff was injured, and the plaintiff had full knowledge of such violation, held to show that he had assumed the risk.—Reberk v. Horne & Danz Co., Minn., 88 N. W. Rep. 1003.

105. MASTER AND SERVANT—Assumption of Risk.—A freight brakeman, ordered by a railroad company to brake on a passenger train having cars with mismatched couplers, held not to have assumed the risk of such defective appliances.—Southern Pac. Co. v. Winton, Tex., 66 S. W. Rep. 477.

106. MASTER AND SERVANT.—Rules of Master.—In an action against a railroad company for negligence of a conductor, whereby a brakeman was killed, it was not error to receive in evidence a rule of defendant requiring conductors to take every precaution for the protection of their trains.—Pearl v. Omaha & St. L. R. Co., Iowa, 88 N. W. Rep. 1078.

107. MORTGAGES — Foreclosure by Advertisement.—Where mortgagees takes possession without consent under color of foreclosure by advertisement, which was illegal, such possession was wholly unlawful.—McClory v. Ricks, N. Dak., 88 N. W. Rep. 1042.

108. MUNICIPAL CORPORATIONS—Failure to Carry Out Original Plan of Street Paving.—A petition for street paving signed by a property owner, and the paving of the street by the city in a manner different than called for by the petition, held not to require the property owner to pay his proportion of the expenses.—Winnebago Furniture Mfg. Co. v. Fond du Lac County, Wis., 88 N. W. Rep. 1018.

109. MUNICIPAL CORPORATIONS — Liability to One Riding Bicycle on Sidewalk. — Where plaintiff was rightfully riding his bicycle on a sidewalk, the city would be liable if he was injured because the walk was not reasonably safe for pedestrians.—Gagnier v. City of Fargo, N. Dak., 88 N. W. Rep. 1030.

110. MUNICIPAL CORPORATIONS — Penalty Against Keeping Dog. — Where a city ordinance denounced a penalty against any one having an unlicensed dog, it was not necessary to allege in the complaint in an action for violation thereof that defendant was a resident of the city, although another section of the ordinance confined the right to license dogs to residents.—State v. Nohl, Wis., 88 N. W. Rep. 1004.

111. NEGLIGENCE—Allegation of Negligence.—In an action for personal injuries, an allegation that the acts complained of were negligently done will not render the complaint invulnerable to demurrer, where it appears from the facts charged that the acts charged were not negligent. — Lake Shore & M. S. Ry. Co. v. Butts, Ind., 62 N. E. Rep. 647.

112. NEGLIGENCE—Contributory Negligence.—Where the conductor of a train beckoned to a passenger as they were nearing his station, and the passenger going to the door, swung off in the dark, the carrier was not liable.—Illinois Cent. R. Co. v. Hanberry, Ky., 66 S. W. Rep. 417.

113. NEW TRIAL—Letter Book as Cumulative Evidence.—Books which would only assist the letters of their keeper, read on the trial, held to be cumulative evidence, and therefore not ground for new trial.—Bridges v. Williams, Tex., 66 S. W. Rep. 484.

114. PARENT AND CHILD — Liability for Support. — A father whose conduct has rendered it necessary to deprive him of the custody of his child is not thereby released from his duty to support him. — Leibold v. Leibold, Ind., 62 N. E. Rep. 627.

115. PARTIES—Failing to Demur to Defect of Parties.—Under the statutes of Kansas a defendant cannot object to a defect of parties plaintiff on the trial, where no objection was taken by demurrer or by his answer—Buckingham v. Dake, U. S. C. C. of App., Eighth Circuit, 112 Fed. Rep. 258.

116. PARTNERSHIP — Rights of Surviving Partner.—Contract purporting to be by two individuals doing business under a firm name, and signed in such firm name, held not to be act of surviving partner, though the one not signing was the surviving partner.—Baird v. Harper, Del., 51 Atl. Rep. 141.

117. PLEADING—Filing Amended Petition After Trial.—The court did not abuse its discretion in refusing to permit the filing of an amended petition, not offered until after one trial had been had.—Board of Internal Improvement for Lincoln County v. Moore's Admr. Ky., 66 S. W. Rep. 417.

118. PRINCIPAL AND AGENT — Liability of Agent for Accepting Unauthorized Consideration. — A principal in an action against an agent for damages for accepting less than the agreed consideration for property sold must plead the return or offer to return of the consideration received for the property. — Lunn v. Guthrie, Iowa, 88 N. W. Rep. 1060.

119. PRINCIPAL AND SURETY—Defense That Principal Was in Default When Elected.—The sureties on the official bond of a school treasurer are estopped from alleging, as a defense to their liability on the bond, that the treasurer was a defaulter at the time of his election, and ineligible to the office under Const. art. 2, § 10.—Hogue v. State, Ind., 62 N. E. Rep. 686.

120. RAILROADS—Validity of Condition Against Liability for Fires.—Where a railroad company grants permission to another to construct a building on its right of way, on condition that it shall not be liable for loss by fire from its locomotives, the condition is valid.—Greenwich Ins. Co. v. Louisville & N. R. Co., Ky., 66 S. W. Rep. 411.

121. RECEIVING STOLEN GOODS—Proving Name of Thief.—Where an information for receiving stolen property unnecessarily alleges the name of the thief, or that his name is unknown, it must be proved as alleged to identify the offense.—Simon v. State, Ind., 62 N. E. Rep. 625.

122. REFORMATION OF INSTRUMENTS—Ground of Mistake.—Where there is no mutual mistake in the description in a deed of the property to be conveyed, and the parties intend to describe the land conveyed, a reformation thereof is not warranted on the ground of mistake.—Sherwood v. Johnson, Ind., 62 N. E. Rep. 645.

123. SALES—Damages for Failure to Deliver.—Under Rev. Codes, § 4985, the measure of damages for breach of a contract to deliver personalty is the detriment caused by failure to deliver, and, where the price has not been paid in advance, is the excess of the value of the property to the buyer over the amount which would have been due if the contract had been fulfilled. —Talbot v. Boyd, N. Dak., 88 N. W. Rep. 1026.

124. SHIPS AND SHIPPING—Vessel Without a Lookout. —It is culpable negligence for an officer to leave his vessel entirely without a lookout, especially when another vessel is known to be in the vicinity.—Wilder's S. S. Co. v. Low, U. S. C. C. of App., Ninth Circuit, 112 Fed. Rep. 161.

125. STATUTES—Plurality of Subjects in Title.—Where the subject of an act is single, and is expressed in the title, the act is not invalid because the title announces a plurality of subjects.—Eaton v. Guarantee Co. of North Dakota, N. Dak., 88 N. W. Rep. 1029.

126. TAXATION—Burden of Proving Authentication of Tax Bills.—In an action by a city to recover taxes, the burden of proof was on plaintiff to show that the tax bills were properly authenticated; that fact being denied by the answer.—Reccius v. City of Louisville, Ky., 66 S. W. Rep. 410.

127. TAXATION—Excluding from Assessment.—Exclusion of a worthless account in estimating valuation of estate for the purpose of transfer tax held proper.—*In re* Manning's Estate, N. Y., 62 N. E. Rep. 565.

128. TAXATION — National Bank Property. — Under Gen. St. 1888, §§ 3882, 3883, 3836, property of a national banking corporation, used in the transaction of its business, is not subject to direct taxation.—Middletown Nat. Bank v. Town of Middletown, Conn., 51 Atl. Rep. 188.

129. TAXATION—Right to Compel Return of Illegal Taxes.—The state auditor may be required by *mandamus* to draw his warrant in favor of a bank for an excess of taxes paid by it into the treasury by reason of a mistake as to the rate of taxation, but not for an excess of taxes paid by reason of an erroneous assessment.—German Security Bank v. Coulter, Ky., 66 S. W. Rep. 425.

130. TAXATION — Right to Redeem. — The owner of land held to have no right to redeem from tax sale, though it was taxed in name of another and notice to redeem was given only to such other person and those in possession. — Hawkeye Loan & Brokerage Co. v. Gordon, Iowa, 88 N. W. Rep. 1081.

131. TAXATION—Transfer Tax on Gifts.—Gift of stock, with reservation of dividends and right to vote, is subject to transfer tax.—*In re* Brandreth's Estate, N. Y., 62 N. E. Rep. 563.

132. TRADE-MARKS AND TRADE-NAMES — Words in Common Use. — Words in common use cannot be adopted as a trade-mark.—Cooke & Cobb Co. v. Miller, N. Y., 62 N. E. Rep. 562.

133. TRESPASS—Liability of One Who Accepts Benefits.—Where a trespass is done for the benefit of another, who subsequently agrees to the act, it renders him liable as though he had originally commanded it. —Brown v. City of Webster City, Iowa, 88 N. W. Rep. 1070.

134. TRIAL—Equitable and Common Law Issues.— Where an answer in an action at law presents equitable issues, they should be tried and determined by the court before submitting the common-law issues to a jury.—Arnett v. Smith, N. Dak., 88 N. W. Rep. 1037.

135. TRIAL—Motion for Judgment Notwithstanding Special Verdict.—A party aggrieved by a special verdict cannot move the court for judgment notwithstanding such verdict.—Scott v. Farmers' & Merchants' Nat. Bank, Tex., 66 S. W. Rep. 485.

136. TRIAL—Right to View the Evidence.—The court did not abuse its discretion in permitting the jury to be taken to the court house yard to see a horse and phaeton offered by plaintiff as evidence.—Board of Internal Improvements for Lincoln County v. Moore's Admr., Ky., 68 S. W. Rep. 417.

137. TRIAL AND PROCEDURE—Separate Findings for Separate Parties.—The court cannot be required to make separate findings of fact as to each separate plaintiff or defendant, or group of plaintiffs or defendants.—Turpie v. Lowe, Ind., 62 N. E. Rep. 628.

138. TROVER AND CONVERSION—Assessing Damages. —In an action for conversion of bonds, the value of other bonds delivered to plaintiff in lieu thereof should be deducted in fixing the measure of damages. —Storrs v. Robinson, Conn., 51 Atl. Rep. 135.

139. TRUSTS AND TRUSTEES — Right of Trustee to Sell Securities in His Possession.—A sale of securities by a trustee, with whom they were deposited by a corporation to secure an issue of bonds, held fraudulent and voidable as against a holder of such bonds.—Anthony v. Campbell, U. S. C. C. of App., Eighth Circuit, 112 Fed. Rep. 212.

140. WILLS—Determination of Members of a Class.— Where a devise is to a class, the members of the class are *prima facie* to be determined on the testator's death, unless the will indicates a contrary intent.—*In re* Nicholson's Will, Iowa, 88 N. W. Rep. 1064.

141. WILLS — Payment of Mortgage on Devise.—On a simple devise of land to parties and their heirs, forever, mortgages previously executed by the testatrix are payable by the executor.—Bulkley v. Seymour, Conn., 51 Atl. Rep. 125.

142. WILLS—Right of Beneficiary to Increase in Trust Property as "Profits."—Where a testator directed that the "interest and profits" of a fund be paid to his daughter "annually," the principal at her death to go to her surviving children, property in which the fund was invested having sold for much more than the amount of the fund originally invested, the daughter was not entitled to the increase in value as "profits," but to the income thereof.—First Nat. Bank v. Lee, Ky., 66 S. W. Rep. 413.

143. WILLS — Undue Influence of Priest.—The relations existing between a priest and a testator held under the evidence, in a will contest case, to impose on the priest the burden of showing that the will was not procured through undue influence.—*In re* Spark's Will, N. J., 51 Atl. Rep. 118.

144. WITNESSES — Impeachment of a Party's Own Witness.—A party cannot introduce the testimony of a third person to show that his own witness has, since testifying, made statements contradictory of her testimony.—Appeal of Carpenter, Conn., 51 Atl. Rep. 126.

145. WITNESSES—Right of Wife to Testify for Husband as Administrator of Child.—The wife may testify for plaintiff in an action by the husband as administrator to recover damages for the death of their infant child, though she and the husband are the joint beneficiaries of the recovery.—Board of Internal Improvement for Lincoln County v. Moore's Admr., Ky., 66 S. W. Rep. 417.